

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No. 05-10917 PBS

THE HIPSAVER COMPANY, INC.,
Plaintiff / Counterclaim Defendant,

V

J.T. POSEY COMPANY,
Defendant / Counterclaim Plaintiff.

**HIPSAVER’S MEMORANDUM IN SUPPORT OF ITS MOTION *IN LIMINE*
TO EXCLUDE EXPERT REPORTS AND TESTIMONY OF
KEVIN MINISSIAN**

Plaintiff, the HipSaver Company, Inc. (“HipSaver”) respectfully submits this memorandum in support of its motion to exclude the expert reports and testimony of Defendant J.T. Posey, Inc.’s (“Posey”) expert Kevin Minissian. The expert reports and testimony of Mr. Minissian fail to satisfy the requirements of the Federal Rules of Evidence and existing case law, which require that experts employ a reliable methodology. Mr. Minissian failed to personally conduct or adequately supervise the tests upon which his conclusions are based, and his qualifications as an expert are similarly inadequate. His conclusory opinions will fail to assist the jury in finding the facts and accordingly, should be excluded.

FACTS

HipSaver challenges Posey’s proffer of reports and testimony by Kevin Minissian as “expert” opinion. *See* Ex. A, Expert Report of Kevin Minissian, submitted February 16, 2006 (“Minissian Report”) and Ex. B., Supplemental Expert Report of Kevin

Minissian, submitted October 16, 2006. Mr. Minissian claims experience in the laundry and laundry chemical industry.

Mr. Minissian reviewed various statements regarding the laundering capability of hip protectors on HipSaver's website, and claims to have conducted a series of laundering tests on Posey's hip protector to determine the accuracy of these statements as compared to Posey's products. Ex. A, ¶ 4. Throughout the two speculative reports of Mr. Minissian's personal opinion, he does not testify to any personal knowledge for his conclusions. Mr. Minissian's report is devoid of any information as to the chain of custody of the garments his company tested, and indeed, his deposition testimony confirms that he has no first-hand knowledge of the testing or of the results because he was not even present at the facility during the testing. See Ex. C, Deposition of Kevin G. Minissian ("Minissian deposition"), ¶ 39, 79, 97-98. Specifically, Mr. Minissian's deposition testimony revealed the following information regarding his involvement in the testing on which he based his conclusions:

- 1) he did not personally inspect the hip protectors when they were delivered to his office for testing (Ex. C, Minissian deposition, p. 91);
- 2) he did not perform tests on his own machines, but instead rented machines and failed to review any documentation concerning the rental machines (Ex. C, Minissian deposition, p. 39);
- 3) he did not personally perform the tests, nor was he present at the facility while the tests were being performed (Ex. C, Minissian deposition, p. 39, 88);

- 4) he did not know what material the pads in the protectors consisted of, and did not consider this material in determining the protocol for the tests (Ex. C, Minissian deposition, p. 61-62) ;
- 5) he did not review whether the technician who performed the tests actually followed the protocol he was given, nor did he visit the facility to obtain a copy of the protocol which was entered into the testing machines to verify the actual time and temperature under which the garments were washed and dried (Ex. C, Minissian deposition, p. 40-41);
- 7) he did not place his signature on the garments that had been tested until approximately six months after the tests were performed, and had no first hand knowledge of the information regarding the testing conditions about which he signed (Ex. C, Minissian deposition, p. 78).

Moreover, Mr. Minissian's qualifications as an expert are also inadequate. Mr. Minissian claims to have a master's degree in chemistry from University of California Los Angeles ("UCLA"), but this degree does not appear on the resume attached to his expert report. *See* Ex. A, Appendix A. Mr. Minissian testified that he would provide a transcript from UCLA, but despite HipSaver's continued attempts to obtain this transcript, Mr. Minissian has failed to produce it. *See* Ex. C, Minissian deposition, p. 28. Thus, it is questionable whether Mr. Minissian holds any sort of advanced degree. Tellingly, Mr. Minissian refused to identify himself as an "expert" in his deposition, and no where in his report does he identify himself as such. *See* Ex. C, Minissian deposition, p. 47, 99. Further, Mr. Minissian claims to have served as an expert in a previous

litigation, but this reference is also missing from his resume. *See* Ex. C, Minissian deposition, p. 33.

ARGUMENT

At each stage of the testing upon which Mr. Minissian's conclusions are based, Mr. Minissian lacks personal knowledge as to the make-up of the products being tested, the machines utilized in the tests, and the conditions under which the tests were run. Yet, over six months after the tests had been completed, Mr. Minissian placed his signature on each garment that had been tested, presumably indicating that he had personally approved of the test and the results.

Mr. Minissian's opinions are not based on first-hand knowledge, his testimony is not a product of reliable principles and methods, and he is not qualified as an expert. Thus, the reports and testimony proffered by Kevin Minissian as "expert" should be excluded because the evidence does not constitute expert evidence under the Federal Rules, is unnecessary, and will prejudice the jury. The admissibility of expert testimony is governed by Federal Rules of Evidence, Rules 702 and 703. Under F.R.E. 702,

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise if (1) the testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Fed R. Evidence 702. Under the Rules, "the proponent has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the

evidence.” *Advisory Committee’s Note on 2000 Amendment citing Bourjaily v. United States*, 483 U.S. 171 (1987).

A. Mr. Minissian’s Conclusions Are Based On Tests Of Which He Has No Personal Knowledge, For Which There is No Chain Of Custody, and Which Are Not the Product of Reliable Principles and Methods.

Mr. Minissian was not personally involved in the testing upon which his conclusions are based, and thus his opinions are not based on first-hand knowledge. Moreover, the expert reports do not provide any explanation for the chain of custody of the materials used in the tests upon which Mr. Minissian’s conclusions are based, and Mr. Minissian’s deposition testimony similarly fails to establish a chain of custody. Thus, Mr. Minissian’s reports and testimony are not the product of reliable principles and methods.

Federal precedent prohibits the introduction of such unsupported, conclusory opinions by proffered experts. *See Polaino v. Bayer Corp.*, 122 F. Supp.2d 63, 69 (D. Mass. 2000) (Stearns, J.) (expert opinion based on speculation rather than investigation properly excluded); *see also Goodwin v. MTD Products, Inc.*, 232 F.3d 600 (7th Cir. 2000) (defense expert could not give his opinion concerning lawn mower accident when that opinion was merely based on speculation and not on admissible scientific evidence). Because Mr. Minissian’s testimony is not based on a sufficiently reliable foundation of first-hand knowledge, it should not be admitted. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993) (“...under the Rules the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.”).

In paragraph 4 of his expert report, Mr. Minissian opines on the accuracy of the statement on HipSaver's website, "Only HipSaver hip protectors clearly meets the CDC Guidelines for infection control in the laundry" and the statement "Only HipSaver can be laundered according to the CDC Center for Disease Control Guidelines for laundry." Ex. A, ¶ 4. In formulating his opinion that this statement is false, Mr. Minissian claims to have run laundry tests on Posey's hip protector to determine whether it can be laundered according to the CDC Guidelines. *See* Ex. A, ¶ 4. Mr. Minissian's involvement in the tests upon which his conclusions are based is detailed in his deposition testimony, as follows.

1. Mr. Minissian did not personally inspect the hip protectors when they were delivered to his office for testing.

Mr. Minissian's testimony reveals that he has no first hand knowledge of the condition of the hip protectors when his company first obtained them, nor does he even know the person or party from whom he obtained the garments. Mr. Minissian's opinion on the state of garments after testing can not be reliable if he had no pre-wash inspection with which to compare the results.

Q: Did—When you received the Posey hip protectors from – Did you receive them from Posey or from Mr. Morseburg?

A: They were dropped off to us

Q: By whom? Someone at Posey?

A: No . .

* * *

I don't know who dropped off, but somebody brought to our office . . .

* * *

I can't tell you.

Q: Did you – Did you inspect the – the garments and the packaging at that point in time?

A: I think Doug [Posey's counsel] came over and opened up and told me what – what they were because first time I've seen them . . .

Ex. C, Minissian deposition, p. 91.

2. Mr. Minissian did not perform tests on his own machines, but instead rented machines and failed to review any documentation concerning the rental machines.

Mr. Minissian's deposition testimony reveals that he had no knowledge of the conditions of the washing and drying machines which were utilized in the laundry tests. He testified that he rented machines at an independent commercial laundry facility, and even more incredibly, that he did not review any documentation of the facility regarding these machines. Thus, there are no standards or controls in place for Mr. Minissian's methods, and his conclusions based on these methods are unsupported.

Q: Where is the laundry located?

A: El Monte. El Monte.

Q: Is that a Norchem facility?

A: No, it's an independent laundry

It's a commercial laundry.

Q: What do you mean by 'commercial laundry'?

A. Commercial laundry that washes sheets and towels. They have washing machines.

Q. So, for example, a hotel might send their laundry to them?

A: That's correct.

Q: Does it—Does it do institutional laundry for healthcare facilities?

A: No. We use the facility to – to – We took one of their washers to do the test.

Q: You rented time on one of their machines –

A: Yes.

Q: Have you reviewed the documentation that is kept at this laundry facility in El Monte?

A: No, I have not.

Ex. C, Minissian deposition, p. 39.

3. Mr. Minissian did not personally perform the tests, nor was he present at the facility while the tests were being performed.

Perhaps the most egregious aspect of Mr. Minissian's proffering of an expert opinion is that he did not personally perform the tests upon which his opinion is based,

and indeed, was not even present at the facility while the tests were being performed. This fact is a strong indication of the inherent unreliability of Mr. Minissian's report and testimony.

Q: Do you know whether or not the 100 cycles or any of the 100 cycles was, in fact, conducted in accordance with your protocol?

A: It's in the – The washer has a washer controller. It's a computer.

All the formulas are in that processor.

Q: . . . But have you reviewed it to see that it actually did what you thought it was going to do?

A: I provided the information for my technician to do the test. I did not personally wash them.

Ex. C, Minissian deposition, p. 39 (emphasis added).

Q: Now, you testified earlier that you weren't present at any of the washer and dryer testings, is that correct?

A: Yes.

Q: And is it your understanding that Mr. Gastelum [the technician] . . . that he was present for all of the washings?

A: I'm sure he was because he got paid for it.

Ex. C, Minissian deposition, p. 88 (emphasis added).

4. Mr. Minissian did not know what material the pads in the protectors consisted of, and did not consider this material in determining the protocol for the tests.

Although Mr. Minissian is offered as an expert in the laundry industry, and admits that the formulas that the industry uses for laundering is dependent on the materials washed and dried, Mr. Minissian does not know what material the pad in the hip protector is made of. This lack of knowledge is especially relevant because the pad is the key element of the hip protector being tested. If the pad were to disintegrate in the laundry tests, the entire garment would be rendered ineffective. Thus, Mr. Minissian's

lack of knowledge about the material involved in his tests is yet another indication of inherent unreliability.

Q: And what was the pad made out of that is incorporated in the product?

A: I do not know.

Q: Did anybody tell you what it's made of?

A: I have no idea.

Q: Did you consider that when you set up the formula for washing and drying?

A: No.

Q: Aren't the formulas that the textile industry use based on the materials that are to be washed and dried?

A: The wash and dry materials are – if there's a tag on the – on the product says what the recommended wash cycles are, we follow that. If it's not, we basically do, just from our experience, what – how long it takes to dry and follow the soil characteristic of the fabric and wash according to that. It's basically from our experience in the industry to generate the formulas to wash.

Ex. C, Minissian deposition, p. 61-62.

Q: Do you know where those pads are in the garments that you tested?

A: I guess they're sealed. They're sewed inside the fabric.

Q: And you don't – You don't know what the material is –

A: No, I don't.

Q: . . . of what the foam is, is that correct?

A: No.

Q: And you don't know what the sealing material is either, do you?

A: No.

Ex. C, Minissian deposition, p. 92.

5. Mr. Minissian did not review whether the technician who performed the tests actually followed the protocol he was given.

As Mr. Minissian did not personally perform the tests, he passed the protocol for washing and drying on to his technician, Mr. Gastelum, to input into the machines and conduct the tests. Yet, there is no written record of the protocol that Mr. Minissian gave to his technician, or the of the protocol that his technician actually used, and Mr. Minissian failed to verify that the tests were done according to his verbal protocol.

Q: . . . was there a formula guide that you produced that set out all the specifications for washing the Posey products?

A: I get the formula guide verbally to Jaime Gastelum.

Q: Did you write it down?

A: No.

Ex. C, Minissian deposition, p. 57.

Q: Did you go and review whether, in fact, your technician . . . had done the washing and drying in accordance with your protocol?

A: No, I did not.

Ex. C, Minissian deposition, p. 40.

Q: How did you know or how were you able to verify that a setting of 145 or 150 was, in fact, the actual temperature on the dryer?

A: My technicians carry a laser temperature probe.

Q: And did Mr. Gastelum maintain a record of the temperatures that he was able to record?

A: I don't know if he kept a record or not.

Ex. C, Minissian deposition, p. 55-56.

Moreover, Mr. Minissian did not visit the facility to obtain a copy of the protocol which was entered into the testing machines to verify the actual time and temperature under which the garments were washed and dried. The information regarding the conditions under which the tests were conducted is only available in the microprocessor on the machines, and Mr. Minissian neither personally inspected this microprocessor nor made a hard copy record of this information. As the testimony below indicates, there is no contemporaneous record of the protocol for the tests upon which Mr. Minissian based his conclusions. This lack of personal knowledge and supervision is indicative of the unreliability of the methods used in the testing which are the basis for Mr. Minissian's opinions.

Q: Did you – did you verify that the computer code included your protocol?

A: It's not a protocol. It's basically—washer's a microprocessor.

Q: Okay. But does the microprocessor . . . incorporate the wash formula guide used to wash . . . Posey products which you gave to Mr. Morseburg?

A: Yes.

Q: How do you know that?

A: Because it's in there.

Q: How do you know it's in there?

A: Well, what I'm saying is when I go visit, I can get the copy of it.

Ex. C, Minissian deposition, p. 40-41.

Q: Somebody told you they were washed 100 times and you signed your name, is that correct?

A: That's correct.

Q: So you don't know whether they –

A: My employees.

Q: You don't know whether they were washed 10 times, one time, 100 times, 1000 times, do you?

A: My employees were instructed to do exactly what I told them.

Q: Okay. And how did you confirm?

A: I have the controller at the plant which tells me how many times the – this formula was washed.

Q: So where are the formulas written down? That's what –

A: I don't have it with me.

Q: Are they in your head?

A: Yes.

Q: Are they someplace else?

A: No they're – they're in the computer. He's got them – he's got them in the washer controllers.

Q: Are they - - Are they in a textbook or a reference someplace?

A: Again in – it's in the microprocessor.

Ex. C, Minissian deposition, p. 44-45.

6. Mr. Minissian did not place his signature on the garments that had been tested until over six months after the tests were performed, and had no first hand knowledge of the information regarding the testing conditions about which he signed.

Mr. Minissian conducted the laundry tests in February 2006, but did not sign the garments that had been tested until approximately September 2006, over six months after the tests were performed. Further, his deposition testimony reveals that his signature does not confirm the conditions under which the tests were conducted. Mr. Minissian

mistakenly thought that all of the garments had been washed at 120 and 160 degrees at the time he had signed them, and only during the deposition, when he placed a call to the technician who ran the tests, did he determine that only some of the garments had been washed at each temperature. Thus, there is no indicia of reliability in these tests and Mr. Minissian's opinion is unsupported by personal observation.

Q: . . . When did you physically inspect . . . the products?

A: When they came back from the laundry, I – I looked at it as soon as they returned.

Q: And—And is that the point at which you signed the garments?

A: No. I was – The items were sitting in our office awhile back. I mean all this time actually they were sitting . . .

Q: When did you put your signature on the garments?

A: Two months ago, a month and a half ago. I don't remember exact date, but it was not too long ago.

Q: So you didn't sign them at the time you inspected them, is that correct?

A: No, I did not.

Ex. C, Minissian deposition, p. 79.

Q: . . . But your signature does—is not a representation of personal knowledge that a particular garment was washed in a particular temperature, dried at a particular temperature or washed a certain number of times, is it?

A: To my knowledge they were washed.

Q: That's all you know.

A: That's all I know.

Ex. C, Minissian deposition, p. 79.

Q: Earlier this morning you testified twice that all of the pads were – were washed at both 120 and 160 degrees, correct?

A: That's correct.

Q: You then this morning – You then a few moments ago called Mr. Gastelum during the break, correct?

A: That's correct.

Q: And Mr. Gastelum informed you, no, the pads had been washed, some at 120 and some at 160, correct?

A: Yes.

Q: Did you know that when you signed each one of those pads that you brought with you today?

- A: I only signed – I signed the pads based on what they said on them.
- Q: You signed – So you didn't know whether what they said had been done or not, is that correct?
- A: That's not what I said. I said I signed what they were indicated on the pad as far as what they were washed at.
- Q: Right. And you had no personal knowledge of what they were washed at, is that correct?
- A: As far as temperatures?
- Q: As far as temperature, as far as chemical, as far as time, as far as drying, as far as washing, as far as what was washed at 160 and what was washed at 120. You have no personal knowledge whatsoever, do you?
- A: He was told to wash according to the CDC Guidelines based upon the temperatures, but I don't – I didn't remember whether they were washed together or separately. I guess they were heavy-duty and the light-duty items, but they were washed separately so I cannot –
- Q: And – And when you signed them, you didn't know that, did you? You didn't know what you were signing, did you?
- A: I signed what they said on there.

Ex. C, Minissian deposition, p. 97-98.

As the above passages indicate, Mr. Minissian's conclusions are not supported by any first hand knowledge. Moreover, neither his report nor his testimony establish a chain of custody of the garments tested. Thus, the methods and principles upon which Mr. Minissian's conclusions are based are inherently unreliable, and his opinions would not be helpful to the jury.

B. Mr. Minissian Does Not Qualify As An Expert.

Kevin Minissian is improperly offered as an expert in hospital and/or institutional laundry and laundry products. Mr. Minissian has no experience in the actual laundering practices of hospital laundries. Due to infection control concerns, hospital laundry standards are particularly stringent. HipSaver's statements regarding the laundering capabilities of its product relate to the actual practices of its customers (i.e., the hospital industry) rather than simply to the CDC Guidelines alone. As such, Mr. Minissian is unqualified to opine on the average temperature in hospital and long-term care facilities,

as well as the practices of these facilities in following the CDC guidelines. *See* Ex. A, ¶¶1-3.

In particular, Mr. Minissian has little to no experience with CDC guidelines, and has not done any research on the impact of water temperature or heat or bleach on materials that are used in healthcare facilities. *See* Ex. C, Minissian deposition, p. 65. He also has never conducted any research on infections, infectious control or decontamination of materials laundered in healthcare facilities. *See* Ex. C, Minissian deposition, p. 72. Mr. Minissian had never even heard of or seen a hip protector product until he was retained in connection with this litigation. *See id.* In short, Mr. Minissian has no qualifications as an expert in laundering materials used in healthcare facilities, in the CDC guidelines, or in hip protectors generally.

Moreover, Mr. Minissian's qualifications are not sufficient. First, Mr. Minissian has offered no proof of an alleged degree in chemistry from UCLA, which is missing from the resume attached to his expert report. *See* Ex. A, Appendix A; *see also* Ex. C, Minissian deposition, p. 28. Thus, it is questionable whether Mr. Minissian holds any sort of advanced degree.

Additionally, the only expert experience listed on his resume is a reference to a lawsuit filed against his own company, in which he did not serve as an independent expert. *See* Ex. C, Minissian deposition, p. 32. While Mr. Minissian claims to have served as an expert in a previous litigation, this reference is also missing from his resume. *See* Ex. C, Minissian deposition, p. 29-31, 33. Thus, Mr. Minissian's qualifications as an expert in the laundry industry are virtually unknown.

Tellingly, Mr. Minissian refused to identify himself as an “expert” in his deposition, and no where in his report does he identify himself as such. *See* Ex. A.

Q: . . . But you were doing [the tests] as an expert witness, correct?

A: I was asked to wash the items.

Q: Were you – Were you asked to do [the tests] as an expert witness?

A: I’m not – I don’t know what you want to call expert witness, but I was asked to wash and see if the product will handle the wash formulas according to CDC Guidelines.

Ex. C, Minissian deposition, p. 47.

Q: . . . But – but you’re being asked to testify to the facts as an expert witness, aren’t you?

A: I’m asked to – We were asked to wash these items, which we did.

Ex. C, Minissian deposition, p. 99.

Thus, Mr. Minissian is not qualified to serve as an expert in this case and his opinions will not be helpful to a jury. His expert reports and testimony should therefore be excluded.

C. Mr. Minissian’s Reports And Testimony Should Be Excluded Because They Are Not Necessary To Assist The Trier of Fact.

Expert testimony is improper when it will not assist the trier of fact. “There is no more common certain test for determining when experts may be used than the common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from those having a specialized understanding of the subject involved in the dispute.” *Advisory Committee’s Note citing Ladd, Expert Testimony*, 5 Vand. L. Rev. 414, 418 (1952).

Here, Mr. Minissian’s report and opinion testimony is offered to show the falsity of statements on Hipsaver’s website regarding the durability of its garments in light of the CDC laundering standards. Given that Mr. Minissian offers nothing more than a

speculative personal opinion which is unsupported by first hand knowledge, his report and testimony cannot qualify as necessary to assist the jury on any basis. The jury's common sense assessment of the challenged advertisements will be sufficient, without more, to analyze the advertisements and opine on the matter. Accordingly, Mr. Minissian's testimony is unnecessary.

CONCLUSION

Accordingly, for the reasons stated above, HipSaver respectfully requests that the Court grant its motion to exclude the reports and testimony of Mr. Kevin Minissian or alternatively, to selectively strike those portions of Mr. Minissian's reports that the Court finds inadmissible under Rule 702 of the Federal Rules of Evidence.

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CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

/s/ Courtney M. Quish

May 15, 2007

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,

Plaintiff,

V.

J.T. POSEY COMPANY,

Defendant.

AND RELATED COUNTERCLAIM.

Civil Action No. 05-10917 PBS

EXPERT REPORT OF KEVIN MINISSIAN

**WITNESS STATEMENT OF KEVIN MINISSIAN PURSUANT TO
RULE 26(a)(2)(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

I. MY QUALIFICATIONS

Attached as Appendix "A" is a copy of my resume which identifies my qualifications and a list of publications authored by me during the preceding ten years and the cases in which I have testified as an expert at trial or deposition during the past four years.

I am presently employed as the Vice President of Operations at Norchem Corporation ("Norchem"). Briefly, Norchem is in the business of manufacturing and supplying laundry chemicals to the health care, linen, industrial and commercial laundry industry. As the Vice President of Operations and Technical Support of Norchem, I have had leadership roles in the areas of developing new laundry cleaning products, chemical injection systems and water and energy recycling equipment and systems.. I am the inventor of a single pump chemical injection system for commercial and institutional laundries. The invention is the subject of U.S. Patent No. 5,564,595. I am also the author of two articles related to wastewater recycling and the treatment of laundry wastewater. I am also a member of the TRSA and UTSA laundry trade association special project committees that evaluate new, innovative products, such as detergents, bleaching agents, energy and water conservation programs utilizing more effective washing formulas.

I have been actively involved in the TRSA, UTSA, IFI, NAILM and AATCC trade associations.

I am being compensated for my work in connection with this case and any testimony at the rate of \$ 125.00 per hour. This is my normal hourly rate for consulting work. In addition, Norchem is presently conducting some wash testing of some products in connection with this matter for which it is being compensated at the rate of \$ 85.00 per hour per technician plus use of

laundry facility. Neither my compensation nor the compensation of Norchem is dependent upon the content of my report, the nature of my opinions or the outcome of this litigation.

II. DATA AND OTHER INFORMATION RELIED UPON

The data and other information I relied upon in forming my opinions are listed in the attached Appendix "B".

III. MY OPINIONS

I have been asked to express an opinion regarding the accuracy of various statements that appear on the Internet website of The HipSaver Company, Inc. Specifically, I have been asked:

1. Whether the statement "Average Wash/Dry Temperature of Institution Laundries (180°)" is accurate?

In my opinion, this statement is false. Based on my experience, wash temperature range of institutional laundries currently is between 100 F – 160F. Therefore the average temperature is around 130 F and drying temperature for geriatric pads which is similar to hip protector is around 140-150 F. The CDC guideline does not specify such high wash temperatures.

2. Whether the representation "CDC Recommended Wash Temperature Range" of between 180 to 250 degrees is accurate?

In my opinion, this statement is false. As published, CDC guidelines provide two options: a) high temperature wash at least 160 F for Minimum of 25 minutes and b) low temperature wash 71-77 F. In both cases, CDC requires effective use of alkali, detergent, bleach and sour, but in low temperature wash it requires careful monitoring and proof of

proper use of laundry chemicals. In addition, effective drying of 140-150 F and ironing shall provide effective disinfection of common microorganism found in health care environment. CDC guidelines DO NOT recommend wash temperature range of 180 -250 F as advertised in HipSavers website.

3. Whether the representation that “CDC Guidelines Minimum Recommended Wash Temperature (160)” is accurate?

In my opinion, this statement is false. As published, CDC guidelines provide two options: a) high temperature wash at least 160 F for Minimum of 25 minutes and b) low temperature wash 71-77 F. In both cases, CDC requires effective use of alkali, detergent, bleach and sour, but in low temperature wash it requires careful monitoring and proof of proper use of laundry chemicals. In addition, it is well documented in Textile Laundering Technology textbook, which is widely used by laundry industry as guide to proper laundering, that effective use of chlorine bleach at lower temperatures ranging between 120-130 F and pH range between 9.0-10.0 provides an effective laundry disinfection method. Such lower temperature washing allows the industry to conserve energy and minimizes fabric degradation impacted by high temperature, alkali and chlorine bleach. Several studies have concluded that lower temperature washing protects the fabric color and drastically reduces fabric lint in the dryers.

4. Whether the statement that “Only HipSaver hip protectors clearly meets the CDC Guidelines for infection control in the laundry” and the statement “Only HipSaver can be laundered according to the CDC Center for Disease Control) Guidleines for laundry” are accurate?

In my opinion, this statement is false. Norchem has received 80 samples of hip protectors from Posey Company for purpose of evaluating to see whether or not Posey hip protectors meets the CDC wash guidelines for high and low temperature wash cycle. Posey provided 40 pieces of high durability (HD) and 40 pieces of standard (ST) hip protectors. According to Posey specification HD hip protectors are designed for high temperature wash cycle and ST for low temperature wash cycle. We were asked to wash these hip protectors in commercial laundry environment. We chose Valet Laundry Services facility located in El Monte California to wash Posey hip protectors under my supervision. We elected to use 100 lb. commercial laundry machine manufactured by Milnor Corporation equipped with hot and cold water inlet water valves, computer controlled washer microprocessor for accurate temperature control and Norchem's NORFLOW-WIN precision chemical injection system for dosing laundry chemicals such as alkali, detergent, bleach and sour. We divided 80 pieces of Posey hip protector into two separate batches, one batch consist of HD type and second batch ST type. For control purposes, we kept one sample from each batch in a plastic bag. Remaining hip protectors were then washed according to CDC guidelines to high and low temperature wash and dry. After each wash and dry cycle, each batch was examined and compared to control

sample. Each batch were washed 10 times and dried 10 times. The HD hip protector designed for high temperature washed according to CDC guideline showed slight color loss but no physical deformation or degradation. The ST hip protector washed at lower temperatures according to CDC guidelines for low temperature wash showed no sign of color loss or physical change. Both products maintained their integrity and shape after washing and drying at 150 F.

IV. POSSIBLE ADDITIONAL ANALYSIS AND INVESTIGATION

In support of my opinions, at trial, I may rely on visual aids and other demonstrative exhibits which may include, among other things, excerpts from deposition or trial testimony, documents and exhibits relied upon by other witnesses, additional information from the materials listed in Appendix "B", or other types of materials.

In addition, I may supplement this report in the event that additional information is provided to me. I may also rely on testimony given by, or to be given by, other witnesses and on other reports and/or documents supplied to me in the future.

My investigation is ongoing, and I may perform the following additional investigation:

1. We propose to further wash each HD and ST batches for additional 120 times and dry 120 times according to CDC guidelines. This shall provide further evidence whether or not the Posey hip protectors can withstand CDC's high temperature and low temperatures guidelines.
2. If necessary, we may also submit samples of Posey products to independent textile testing institute for independent evaluation.

DATED: February __15__, 2006



Kevin Minissian

APPENDIX "A"

PROFESSIONAL RESUME

Kevin Minissian,
VP of Operations and Technical Support
Norchem Corporation
5649 Alhambra Ave.
Los Angeles, CA 90032

Phone: 323-221-0221
Fax. 323-227-8733
e-mail: Kevin@norchemcorp.com

Professional Experience

1978-1989 Founded Hychem Co. in 1978 to serve the hotel and commercial laundry industry with liquid chemical dispensing systems and laundry products.

1989 to Present In 1989 Hychem was incorporated into Norchem Corporation where I am currently Vice President of Operations and Technical Support. I am responsible for overall product development, design and manufacturing of laundry products, such as computerized chemical injection systems with proof of delivery to washers, water and energy recycling systems and washer controllers. I also supervise Norchem's field technicians to develop effective wash formulas and low energy wash processes to conserve water and energy for the hospital, linen and uniform laundry market. I frequently visit laundries to evaluate Norchem's product performance, the effectiveness of low temperature wash chemistry and wash quality, to conduct bacteriological testing of cleaned fabric with 3M bacterial plate count to insure that linen is hygienically clean and to conduct customer satisfaction survey.

Four years ago I worked with the U.S. Environmental Protection Agency (EPA) to develop laundry products Designed for Environment (dfe). The purpose of "dfe" is to introduce "green" chemistry to protect our environment, waterways and sewer systems. EPA has recognized NUPHASE and MAXIMIZE products in their "dfe" program. These two products were developed and formulated by me over a 10 year period. Following four years of R & D, I was able to develop a

“new generation” laundry detergent named NORBRITE designed for “dfe” and lower wash temperatures (100-120 degrees F). I was instrumental in persuading Norchem Corporation’s laundry customers to convert to NORBRITE in support of lowering energy costs.

Currently I hold one patent for delivery and injection of laundry chemicals to commercial laundry machines.

Education

- | | |
|------|--|
| 1970 | University of Yerevan, Armenia (former Soviet Union)
Engineering Degree in Electrical Engineering and Instrumentation |
| 1975 | University of California, Los Angeles,
Biochemistry, B.S. |

Affiliations and Memberships

Textile Rental Supply Association (TRSA), Uniform Textile Rental Association (UTSA), National Association of Institutional Laundry Managers (NAILM), International Fabric Institute (IFI), American Association of Textile Chemist and Colorist (AATCC).

Articles/Publications

“Water Recovery and Recycling: Ceramic Membrane Filtration Benefits”, Kevin Minissian, *Textile Rental*, March 2004

“Reduce Your Sludge Volume Through Centrifugation”, Kevin G. Minissian, *Textile Rental*, April, 2002

Deposition Testimony

10/07/05 - Bryant v. Norchem Corp., Orange County Sup. Ct Case No. 04 CC 08663

APPENDIX "B"

Documents Reviewed

Document Description	Beginning Bates No.	Ending Bates No.	Date
Jaska and Fredell, <i>Impact of Detergent Systems on Bacterial Survival on Laundered Fabrics</i> , Applied and Environmental Microbiology 39(4):743-748	PC1958	PC1963	April 1980
Mallison, <i>Is low temperature washing safe and effective?</i> , Textile Rental 46-54	PC2050	PC2053	April 1981
Battles and Vesley, <i>Wash Water Temperature and Sanitation In the Hospital Laundry</i> , Journal of Environmental Health, 43(5), 244-250	PC1964	PC1970	1981
Erkenbrecher and Paradee, <i>Low-temp washing for hospital linen</i> , Textile Rental 65(9):64-5, 67-8, 70 passim.	PC2041	PC2049	May 1982
Christian, Manchester and Mellor, <i>Bacteriological Quality of Fabrics Washed at Lower-Than-Standard Temperatures in a Hospital laundry Facility</i> , Applied and Environmental Microbiology 45(2):591-597	PC1951	PC1957	February 1983
Blaser, et al., <i>Killing of Fabric-Associated Bacteria in Hospital Laundry by Low-Temperature Washing</i> , Journal of Infectious Diseases 149(1):48-57	PC1933	PC1942	January 1984
Baker, <i>The V.A. and Low Temp Washing – An Update</i> , Textile Rental 58, 60, 62	PC2033	PC2035	August 1985
Smith, et al., <i>Effect of Water</i>	PC1927	PC1932	August 1987

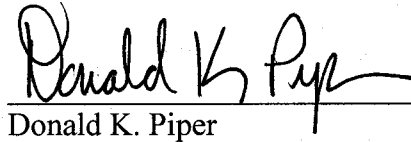
Document Description	Beginning Bates No.	Ending Bates No.	Date
<i>Temperature on Bacterial Killing in Laundry</i> , Infect. Control (8):294-09			
Tompkins, Johnson and Fittall, <i>Low-temperature washing of patients' clothing; effects of detergent with disinfectant and a tunnel drier on bacterial survival</i> , Journal of Hospital Infection 12:51-58	PC1943	PC1950	December 1988
TRSA Healthcare Service Operations Manual	PC2113	PC2155	1995
TRSA Guidelines For Healthcare Linen Service-1999 – By Joint Committee on Healthcare Laundry Guidelines	PC2101	PC2112	1999
HipSaver Web Page entitled “Hip Protectors & The Laundry”	PC0338	PC0339	2005
CDC Guidelines for Environmental Infection Control in Health-Care Facilities	PC0377	PC0389	2003
CDC Guidelines for Laundry in Health Care Facilities, document linked from HipSaver Web Page (Reference: Garner and Favero, <i>Guideline for Handwashing and Hospital Environmental Control</i> , in Guidelines for Protecting the Safety and Health of Health Care Workers)	PC0375	PC0376	1985
Riggs and Klipper, <i>Textile Laundering Technology</i> , Textile Rental Services of America			2005

Wash formula guide used to wash Posey product samples met CDC guidelines. Washing guide record chemical titration levels for alkali, bleach and sour. Kevin Minissian	PC	PC	February 14, 2006
Each wash and dry cycle has been documented and recorded on a log sheet to track product performance. Kevin Minissian	PC	PC	February 14, 2006
Posey samples have been inspected after each wash to monitor product performance in low and high temperature wash according to CDC guideline. Kevin Minissian.	PC	PC	February 14, 2006
Included a Genie wash test piece in the wash cycle with Posey samples to determine chlorine bleach intensity and effective stain removal. Kevin Minissian	PC	PC	February 14, 2006

CERTIFICATE OF SERVICE

I certify that a copy of this document has been forwarded by electronic filing and USPS First Class mail today to Plaintiff's counsel of record, Edward J. Dailey, Esq., BROMBERG & SUNSTEIN, LLP, 125 Summer Street, 11th Floor, Boston, Massachusetts 02110-1618.

Dated: February 16, 2006



Donald K. Piper

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,

Plaintiff,

V.

J.T. POSEY COMPANY,

Defendant.

AND RELATED COUNTERCLAIM.

Civil Action No. 05-10917 PBS

SUPPLEMENTAL EXPERT REPORT OF KEVIN MINISSIAN

CONFIDENTIAL – ATTORNEYS’ EYES ONLY

SUPPLEMENTAL WITNESS STATEMENT OF KEVIN MINISSIAN

I. ACTIVITIES SUBSEQUENT TO INITIAL REPORT

Deleted: XXX

AFTER 10 SUBSEQUENT WASH, ONE SAMPLE OF POSEY HIP PROTECTOR WAS REMOVED FROM THE WASH LOAD AND PLACED IN A PLASTIC BAG. FOUR SEPARATE BATCHES WERE USED TO SEGREGATE HIGH AND LOW TEMPERATURE WASH CYCLES THAT MET CDC GUIDELINES. AFTER 100 WASH CYCLE, THERE WERE 10 SAMPLES LEFT FROM EACH BATCH.

II. MY OPINIONS

Deleted: XXX

Following > 100 wash cycles and further examination of final condition of Posey hip protectors, I concluded that this product performed very well and did not indicate any chemical and physical deterioration from chemical, high and low wash water temperature as stated in CDC guidelines.

III. POSSIBLE ADDITIONAL ANALYSIS AND INVESTIGATION

In support of my opinions, at trial, I may rely on visual aids and other demonstrative exhibits which may include, among other things, excerpts from deposition or trial testimony, documents and exhibits relied upon by other witnesses, additional information from the materials listed in Appendix "B" of my original report or other types of materials.

DATED: October 16, 2006


Kevin Minissian

0001

1

CERTIFIED COPY

2

UNITES STATES DISTRICT COURT

3

DISTRICT OF MASSACHUSETTS

4

THE HIPSAVER COMPANY, INC.,)

5

)

Plaintiff,)

6

)

vs.) No. 05-10917PBS

7

)

J.T. POSEY COMPANY,)

8

)

Defendant.)

9

_____))

AND RELATED COUNTERCLAIM)

10

_____))

11

12

13 DEPOSITION OF KEVIN G. MINISSIAN, a witness

14 herein, noticed by BROMBERG SUNSTEIN LLP, at

15 17871 Park Plaza Drive, Suite 200, Cerritos,

16 California, at 9:14 a.m., Friday, November 10,

17 2006, before Diane M. Lytle, CSR 8606.

18

19 Hutchings Number 142014-NO

20

21

22

23

24

25

0002

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff:

4 BROMBERG SUNSTEIN LLP

5 BY EDWARD J. DAILEY

6 125 Summer Street

7 Boston, Massachusetts 02110-1618

8

9 For Defendant and Counterclaimant:

10 SHELDON & MAK

11 BY DOUGLAS H. MORSEBURG

12 225 South Lake Avenue, 9th Floor

13 Pasadena, California 91101

14

15 Also Present:

16 Roger Jordan, Videographer

17

18

19

20

21

22

23

24

25

0003

1 I N D E X

2 WITNESS: KEVIN G. MINISSIAN

3 EXAMINATION BY: PAGE

4 Mr. Dailey 6

5

6 E X H I B I T S

7 Exhibit identification within the transcript is flagged
8 with "[EXH]" as an identifier.

9 PLAINTIFF DESCRIPTION IDENTIFIED MARKED

10 154 Document entitled 15 15
 11 "Expert Report of Kevin
 12 Minissian," Bates
 13 numbered HS2 002210
 14 through HS2 002221
 15 [EXH-154]

16 155 Document entitled 20 20
 17 "Supplemental Expert
 18 Report of Kevin
 19 Minissian," Bates
 20 numbered HS2 002222
 21 and HS2 002223
 22 [EXH-155]

23 156 Document entitled 90 90
 24 "Warning" Bates number
 25 HS2 002209
 [EXH-156]

26 157 Document entitled 94 95
 27 "Guidelines for Laundry
 28 in Health Care
 29 Facilities" Bates number
 30 PC 0375
 31 [EXH-157]

32 158 HipSaver article from 122 122
 33 the Internet, Bates
 34 number HS2 002287
 35 [EXH-158]

0004

1 E X H I B I T S (Continued)

2 Exhibit identification within the transcript is flagged
3 with "[EXH]" as an identifier.

4

5 PLAINTIFF DESCRIPTION IDENTIFIED MARKED

6 159 Document entitled 127 127

7 "Video 2 NCPS" Bates

8 numbers HS2 002198

9 through HS1 002207

10 [EXH-159]

11 160 Document entitled 130 130

12 "Bacterial Quality of

13 Fabrics Washed at

14 Lower-Than-Standard

15 Temperatures in a

16 Hospital Laundry

17 Facility" Bates number

18 PC 1951 through PC 1957

19 [EXH-160]

20 161 Document entitled 131 131

21 "Killing of

22 Fabric-Associated

23 Bacteria in Hospital

24 Laundry by

25 Low-Temperature Washing"

Bates numbered PC 1933

through PC 1942

[EXH-161]

18

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0005

1 THE VIDEOGRAPHER: We are on the record. My name
2 is Roger Jordon. I'm a video technician contracted by
3 Hutchings Management Corporation, located at
4 6055 East Washington Boulevard, 8th Floor, Los Angeles,
5 California.

6 This is the videotaped deposition of Kevin
7 Minissian, beginning at 9:14 a.m. on November 10, 2006,
8 in the matter of The HipSaver Company, Inc. versus
9 J.T. Posey Company, et al. and related counterclaim,
10 Case Number 05-10917PBS, taken at 17871 Park Plaza
11 Drive, Suite 200.

12 May we have introductions beginning with counsel.

13 MR. DAILEY: Good morning. My name is Ed Dailey.
14 I am counsel for the plaintiff, HipSaver.

15 MR. MORSEBURG: And I'm Doug Morseburg, counsel for
16 the defendant and counterclaimant J.T. Posey Company,
17 Inc.

18 (Continued on the following page.)

19

20

21

22

23

24

25

0006

1 KEVIN G. MINISSIAN,

2 a witness herein, having been sworn, testifies as

3 follows:

4

5 -EXAMINATION-

6

7 BY MR. DAILEY:

8 Q. Good morning, Mr. Minissian. Am -- Am I

9 pronouncing your name correctly?

10 A. Very correctly.

11 Q. Thank you.

12 As -- As you heard, I'm Ed Dailey, and I'm a lawyer

13 from Boston representing the plaintiff in this case, a

14 company named as HipSaver. And I'm going to ask you a

15 number of questions this morning.

16 If you don't understand the question, you have

17 every right to say, "I don't understand it," and I'll

18 try again. I'm not -- I'm not intent on trick

19 questions. They may just be garbled questions. So if

20 you need a question broken up or it just doesn't make

21 sense, let me know, and I'll try again.

22 So is that -- Is that fair?

23 A. Fair.

24 Q. Let me -- Let me ask you this morning, also,

25 when you answer questions to answer with a word. A

0007

1 shake of the head cannot be readily captured by the
2 stenographer.

3 So if you say "yes" or "no" rather than "uh-huh" or
4 just nodding your head, that -- that will be helpful.
5 And if you -- if you lapse, I'll try to remember you --
6 I'll try to remind you, but it will be helpful.

7 Can I ask you to begin and just give us for the
8 record your full name and your business address?

9 A. Kevin G. Minissian. I work for Norchem
10 Corporation, located at 5649 Alhambra Avenue,
11 Los Angeles, zip code 90032.

12 Q. And Mr. Minissian, can you tell me generally
13 what Norchem Company does?

14 A. Norchem is -- manufactures laundry chemical for
15 textile and commercial laundry industry.

16 Q. And for how long have you been associated with
17 the Norchem Company?

18 A. Over 30 years.

19 Q. Okay.

20 And can you briefly tell me about your education
21 beginning with post high school?

22 A. I grew up in Soviet Armenia, graduated high
23 school in Soviet Armenia. Have got Poly Technique
24 Institute in Armenia for four years. Graduated in
25 electrical engineering.

0008

1 Q. And that's equivalent of an undergraduate

2 degree --

3 A. Yes.

4 Q. -- in the United States?

5 A. That's correct.

6 Q. Sure. Okay.

7 A. Came to United States in 1970. Continued my
8 education in Cal State L.A. in biochemistry. From there
9 continued at UCLA for postgraduate.

10 Q. And you have a master's degree in?

11 A. In chemistry.

12 Q. In chemistry.

13 A. And Bachelor of Science in biochemistry.

14 Q. And the master's degree is from Cal State? Is
15 that what you said?

16 A. No, UCLA.

17 Q. I'm sorry, UCLA.

18 Now, I understand that you were retained to prepare
19 an expert report and a supplemental report in this case;
20 is that correct?

21 A. Correct.

22 Q. And can you tell me who retained you?

23 A. Sheldon & Mak.

24 Q. And who at Sheldon & Mak?

25 A. Doug Morseburg.

0009

1 Q. Mr. Morseburg, who's sitting here today?

2 A. Yes.

3 Q. Have you had any previous association with

4 Sheldon & Mak?

5 A. Yes.

6 Q. What has been your association?

7 A. I contact them several years ago. They did a

8 patent for us on a chemical injection system for

9 laundry.

10 Q. And was that a patent that has your name on it

11 as an inventor --

12 A. Yes.

13 Q. -- or someone else?

14 A. Yes.

15 Q. Okay.

16 And when did you first speak with Mr. Morseburg

17 about being a potential expert in this case?

18 A. I would say over almost a year maybe. I don't

19 remember exactly the month, but it's been a while.

20 Q. And what was the nature of your contact with

21 Mr. Morseburg at that time?

22 A. I was contacted to -- because of Sheldon & Mak

23 was aware that we were involved -- involved in the

24 laundry and that Jeff Sheldon was involved in our

25 patents, and I was contacted to see I'll -- I'll be

0010

1 willing to get involved with this case.

2 Q. When did you do first -- When did you first do

3 work on this case, Mr. Minissian?

4 A. When?

5 Q. Yes.

6 A. I think it was last -- the end of last year.

7 Q. And what was the nature of the work you did at

8 the end of last year?

9 A. What kind of work?

10 Q. You said you did some work at the end of last

11 year on this case. What was the nature of the work you

12 did?

13 A. Oh, we were -- we were supplied with Posey Hip

14 Protectors for us to do washing.

15 Q. Okay.

16 And you did that washing when?

17 A. We did the -- We did the washing sometimes, as

18 I recall, January and December somewhere.

19 Q. So the end of 19- -- of 19- -- 2005 --

20 A. Somewhere in there.

21 Q. -- and early 2006 you did washing.

22 Was this when you washed the pads and -- and dried

23 them 10 times each?

24 A. Yes.

25 Q. Did you wash and dry all of the pads 10 times

0011

1 each?

2 A. No. We divided into categories. There were

3 two batches of HipSavers --

4 Q. Uh-huh.

5 A. -- and we were supplied 40 pieces, as I recall.

6 They were washed 10 times and a sample was taken out and

7 it continued washing for subsequently several times

8 more.

9 Q. So, of the initial sample of 40, were all 40

10 washed and dried 10 times?

11 A. Yes. And a sample was taken out after each 10

12 wash.

13 Q. So, for example -- So you started with 40?

14 A. Right.

15 Q. And you took one sample out that you didn't

16 wash; is that correct?

17 A. We had one original sample that we kept as a --

18 as a -- as a reference.

19 Q. As a reference.

20 A. And then after 10 washes, remove one sample.

21 Q. Okay.

22 A. And --

23 Q. So then you would be down to 38 at that point;

24 is that correct?

25 A. Well, there were two samples. One was what we

0012

1 call a heavy, and the other was light stitch, I guess.

2 Q. Uh-huh.

3 A. So there were two samples were taken out every

4 time we washed it.

5 Q. Okay.

6 A. So --

7 Q. Did you wash them separately or did you wash

8 them all together?

9 A. There was one for high temperature wash, one

10 for low temperature wash, so there were two separate

11 batches.

12 Q. Okay.

13 When you washed -- When you washed for low

14 temperature, did you the first time around wash 39

15 samples --

16 A. Yes.

17 Q. -- in one -- in one load?

18 A. Right.

19 Q. Okay.

20 And did you dry 39 samples in one load?

21 A. Yes.

22 Q. And you did the same for the high temperature?

23 A. Uh-huh. Yes.

24 Q. Okay.

25 And then when you got to the second iteration, you

0013

1 now had 38 samples for low temperature and 38 for high

2 temperature; is that correct?

3 A. Yes.

4 Q. And you washed 38 of each at correspondingly

5 low or high temperature; is that correct?

6 A. That's correct.

7 Q. Okay.

8 So the -- So the -- So the routine was that for

9 each iteration of the number of washings --

10 And it was 10 washings each cycle; is that correct?

11 A. That's correct.

12 Q. -- you took one sample out at the completion of

13 the -- of the wash; is that correct?

14 A. Two samples. Again, one heavy, one light.

15 Q. Right. Okay. Fair enough. Fair enough.

16 So at the end of your tests, when you had washed

17 some samples 100 times, how many had been washed 100

18 times?

19 A. Well, if you take out two and two and two, 20

20 samples were removed at the end, plus -- plus one out,

21 so that makes it 21, I guess.

22 Q. 21 had been washed 100 times?

23 A. 21 was taken out.

24 Q. Okay.

25 A. So there were 19.

0014

1 Q. 19. Okay.

2 A. Yeah.

3 Q. Thank you.

4 So 19 were washed 100 times at low temperature and

5 19 washed 100 times at high; right?

6 A. Right.

7 Q. Okay.

8 And in each cycle did you dry the samples between

9 laundry cycles?

10 A. After each wash the samples were dried in the

11 dryers. Full dry and then rewashed again.

12 Q. Okay.

13 And what was the temperature setting you used to

14 dry the samples?

15 A. 145 to 150, average about 145, plus a cooldown.

16 Q. Okay.

17 And that was regardless of whether it was a low

18 temperature wash sample or a high temperature wash

19 sample?

20 A. That's correct.

21 Q. Okay.

22 When did you complete your washing of the 100

23 cycles?

24 A. Sometime in January.

25 Q. Okay.

0015

1 So is it fair to say that you had completed the
2 100-cycle washing prior to the time you wrote your first
3 expert report?

4 A. Yes.

5 Q. Why did you not reference the 100-cycle washing
6 in your first report?

7 A. I'm not -- I'm not understanding what you mean
8 by that.

9 Q. When you -- In your first report, as I read it,
10 you can correct me if I'm wrong, but as I read your
11 first report, you reported on only a 10-wash cycle; is
12 that correct?

13 A. I don't recall.

14 Q. All right. Let me -- Let me -- Fine. And it's
15 not a trick.

16 So let me -- Let me ask the stenographer to mark as
17 the next exhibit in order, which would be 154, a
18 document which is captioned "Expert Report of Kevin
19 Minissian," and has on the first page a Bates number
20 HS2 002210. [EXH-154]

21 (Whereupon the document referred to is marked by
22 the reporter as Plaintiff Exhibit 154 for
23 identification.)

24 MR. DAILEY:

25 Q. All right.

0016

1 Take -- take a moment to review that document which

2 has been marked as Exhibit 154, if you will,

3 Mr. Minissian.

4 A. What am I looking at?

5 Q. I'm asking you, do you recognize that document?

6 A. Yes, I do.

7 Q. Okay.

8 What is it?

9 A. Expert -- Expert Report by Kevin Minissian.

10 Q. Okay.

11 And is this the report that you drafted?

12 A. Yes.

13 Q. Okay.

14 And this is your first report; is that correct?

15 A. Yes.

16 Q. Okay.

17 And let me ask you to refer to the unnumbered page
18 that has a Bates number in the bottom right-hand corner,

19 HS2 002214. Do you see that?

20 A. Okay.

21 Q. Do you see that? I'm going to ask you to look
22 at the last line. And do you see the sentence beginning

23 "After each wash"?

24 A. That's correct.

25 Q. Okay.

0017

1 It says, "After each wash and dry cycle, each batch

2 was examined and compared to the control sample.

3 Each --"

4 A. That's correct.

5 Q. "Each" -- And the next sentence says, "Each

6 batch was washed 10 times and dried 10 times." Period.

7 Did I read that correctly?

8 A. That's correct.

9 Q. Okay.

10 Is this a report on only the first 10 washings and

11 dryings or on all 100?

12 A. That indicates the process we were doing.

13 Q. I see.

14 At the time you wrote the report, had you finished

15 100 cycles of washing and drying?

16 A. My understanding, yes.

17 Q. What do you mean your understanding?

18 A. We were done with the report -- We were done

19 with the washing, and once I got the samples back, then

20 I finished my report.

21 Q. And was it your intent in this first report to

22 report only on 10 washings or 100 washings?

23 A. All of them.

24 Q. All of them. Okay. Okay.

25 Can you -- Can you show me where in this first

0018

1 report you state that you are reporting on all 100?

2 A. It's not -- doesn't say that, but that's what

3 we were instructed to do.

4 Q. Okay.

5 You were instructed by whom?

6 A. By Doug Morseburg to wash 100 times.

7 Q. Were you instructed by Mr. Morseburg to report

8 on the results of 100 times or 10 times?

9 A. No. We were instructed to wash them 100 times,

10 10 times, and take samples out.

11 Q. Okay. I -- I think we're having a problem

12 here.

13 Were you instructed by Mr. Morseburg for this first

14 report to report on the results of 100 washings and 100

15 dryings for both low temperature and high temperature?

16 A. What do you mean by results because I was not

17 instructed to -- We were instructed to basically wash

18 and -- and bring the samples back to them.

19 Q. Were you asked to provide an opinion on the

20 results of 100 washings?

21 A. I was -- I was requested to respond to the --

22 the questions that were -- were provided to us and get

23 a -- regarding the CDC and do 100 washes and then return

24 the samples back to Sheldon & Mak.

25 Q. Okay.

0019

1 So you washed --

2 A. And then -- And then he asked me about the --
3 my comment, what I felt about the -- the condition of
4 the samples, and I explained to him that basically I did
5 not see any physical damage to the fabric with the
6 exception of color loss.

7 Q. Okay.

8 And is that an opinion based on 100 or on 10?

9 A. On 100.

10 Q. And I'm going to ask you to return to the page
11 that I just referenced to you HS2 002214.

12 A. Okay.

13 Q. And at the top of that page, do you see the
14 number "4"?

15 A. Yes.

16 Q. And this is one of the questions you were asked
17 to provide an opinion on; is that correct?

18 A. That's correct.

19 Q. Okay.

20 And the question is, "Whether the statement that,
21 quote, 'Only HipSaver hip protectors clearly meets the
22 CDC Guidelines for infection control in the laundry,'
23 closed quote, and the statement, quote, 'Only HipSaver
24 can be laundered according to the CDC Center for Disease
25 Control Guidelines for laundry,' quote, are accurate,"

0020

1 question mark.

2 Did I read that correctly?

3 A. That's correct.

4 Q. And is this your opinion below where you state,

5 "In my opinion, this statement is false"?

6 A. Yes.

7 Q. And did you render that opinion based on the

8 100 washings you did?

9 A. No. That opinion is based on my professional
10 opinion.

11 Q. Okay.

12 I'm going to ask you to look at another exhibit.

13 And I'm going to ask that this be marked as the next in

14 order Exhibit 155, and this is a document that is --

15 Excuse me -- has a Bates number on the first page HS2

16 002222. And it's captioned "Supplemental Expert Report

17 of Kevin Minissian." [EXH-155]

18 (Whereupon the document referred to is marked by

19 the reporter as Plaintiff Exhibit 155 for

20 identification.)

21 MR. DAILEY:

22 Q. Take a moment to look at that.

23 Do you know what that document is?

24 A. Yes.

25 Q. And what is that document, if you know?

0021

1 A. Following 100 washes, that's -- that's exactly
2 what it says.

3 Q. Okay.

4 Do you see where it says -- I'm going to ask you to
5 look at the second page of this document that is
6 captioned HS2 002223. Do you see that? I'm going to
7 ask you to look at the top of the page.

8 Do you see where it says "Supplemental Witness
9 Statement of Kevin Minissian"?

10 A. Right.

11 Q. Do you see that?

12 A. Yes.

13 Q. And I -- And Roman Numeral I says "Activities
14 subsequent to initial report."

15 And then you go on to state, "After 10 subsequent
16 wash, one sample of Posey Hip Protector was removed from
17 the wash load and placed in a plastic bag. Four
18 separate batches were used to segregate high and low
19 temperature wash cycles that met CDC guidelines. After
20 100 wash cycles there were 10 samples left from each
21 batch."

22 Did I read that correctly?

23 A. That's correct.

24 Q. And let me ask you first. Why did you submit
25 this as a draft word processing document? Did you have

0022

1 a reason for doing that?

2 A. I was asked to do that, I mean.

3 Q. You were asked to -- to -- to submit it in this

4 form?

5 A. I don't remember. It was sent to me to respond

6 to my final conclusion and that's what I did.

7 Q. What was sent to you?

8 A. I was asked to do my final conclusion as far

9 as -- the -- following to the 100 washes what my final

10 conclusion was.

11 Q. Okay. That's not what I asked you.

12 I asked you -- You said something was sent to you.

13 What was sent to you?

14 A. There were -- I was e-mailed to me to respond

15 to a report and this is my report.

16 Q. What report were you responding to?

17 A. To the final -- my final -- My understanding is

18 this is my final report of the 100 washes.

19 Q. Okay. Let's -- Let's step back a second.

20 You received an e-mail from whom?

21 A. Doug Morseburg.

22 Q. And what did -- As you remember it, what did

23 Mr. Morseburg ask you to do?

24 A. My final summary to summarize my report.

25 Q. Okay.

0023

1 So he was ask- -- He -- He sent you an e-mail and
2 said, "Would you please summarize your earlier report?"

3 A. My -- my -- my professional opinion of -- of
4 100 washes.

5 Q. Okay.

6 And where you say on this Exhibit 155, "Activities
7 subsequent to the initial report," what activities are
8 you referring to?

9 A. Where is activity? I'm not --

10 Q. It's right next -- If you look at Roman
11 Numeral I at the top, you'll see it says, "Activities
12 subsequent to initial report."

13 A. The report I have here, I guess, the following
14 to -- to this report, that's what I'm understanding.

15 Q. Okay. Okay.

16 So it was subsequent to that. But what did you do
17 that was subsequent to the first report?

18 A. Just to summarize my final report.

19 Q. Okay.

20 You did no -- You did no further launderings or
21 dryings?

22 A. No, nothing.

23 Q. You looked at no expert data?

24 A. No.

25 Q. You didn't do any further observation of the

0024

1 materials; is that correct?

2 A. I -- I looked at the bags as -- I put all the
3 bags in a -- in the plastic bags and placed them and
4 shipped them back to them prior.

5 Q. Okay. Okay.

6 Did you write this document that's been marked as
7 Exhibit 155?

8 A. Yes.

9 Q. Okay.

10 And what did you do with it when you finished it?

11 A. I mailed it to Sheldon & Mak to Doug Morseburg.

12 Q. Okay. Fair enough.

13 Did you write the first report which has been
14 marked as Exhibit 154?

15 A. Yes.

16 Q. Did you review a draft with Mr. Morseburg?

17 A. I don't recall. It's been awhile.

18 Q. Okay.

19 Did you review the draft of the second report, 155?

20 A. I wrote that report.

21 Q. Did you review it with Mr. Morseburg?

22 A. I e-mailed it to him.

23 Q. Did you e-mail it to him in final form or did
24 you make any corrections?

25 A. No. I e-mailed it just the way it was.

0025

1 Q. Just the way it is. Okay. Fair enough.

2 Now, you told me that you have a master's of

3 science degree in chemistry? Is that it?

4 A. Uh-huh.

5 Q. Subsequent to obtaining that degree -- And when

6 did you obtain that degree?

7 A. '78.

8 Q. 1978?

9 A. I think so.

10 Q. Okay.

11 Subsequent to obtaining that degree -- Let me go

12 back a second. I want you to look at your resume in

13 Exhibit 154. Would you mind looking at -- I'll tell you

14 what page it is. It begins with -- It's Appendix "A"

15 and it begins with the Bates numbers HS2 002216.

16 A. Oh, this --

17 Q. It says "Professional Experience" --

18 A. No, this is wrong. That's supposed to be State

19 of -- California State University.

20 Q. Well, let's -- Wait a minute. Let's --

21 let's -- let's go for a second.

22 A. Okay.

23 Q. Let's move to the -- to the first page of the

24 rev- -- of the resume.

25 A. Okay.

0026

1 Q. And it says "Appendix 'A' Professional Resume."

2 Do you see that?

3 A. Yes.

4 Q. Did you prepare this document?

5 A. Yes.

6 Q. When did you prepare this document?

7 A. Summer -- Let's see. I was asked to --

8 Generally I -- I have been self-employed since the

9 beginning. I found the Nor- -- I found Norchem, the

10 company that I found is -- which currently Norchem,

11 right at college level.

12 Q. I don't think that was the question I asked

13 you.

14 MR. DAILEY: Could you read the question back.

15 (The record is read by the reporter.)

16 THE WITNESS: This document was prepared sometime

17 summertime.

18 Q. Last year?

19 A. No, this year.

20 Q. This year? Okay.

21 A. What I'm saying is I do not have a resume. I

22 was asked to prepare a resume.

23 Q. Okay. Fine. All right. Fair enough.

24 A. That's what I'm saying.

25 Q. But -- But this is a -- This is an accurate

0027

1 statement of your resume, and it was prepared by you; is

2 that correct?

3 A. Yes.

4 Q. Okay. All right.

5 Let me look -- ask you to go to the second page of

6 your resume. And you say that in 1970 you completed an

7 "Engineering Degree in Electrical Engineering and

8 Instrumentation" at the University of Yerevan in

9 Armenia --

10 A. Uh-huh.

11 Q. -- is that correct?

12 A. Right. That's correct.

13 Q. Okay.

14 And in 1975 you state that you received a

15 bachelor's degree in biochemistry; is that correct?

16 A. Yeah, that should be Cal State L.A., actually,

17 I think but --

18 Q. Okay.

19 Where did you receive the master's degree?

20 A. UCLA.

21 Q. Okay.

22 And why isn't that on your resume?

23 A. I forgot to put it on there.

24 Q. And when did you receive the master's degree?

25 A. '78.

0028

1 Q. And what did -- What did you receive the
2 master's degree in?

3 A. Chemistry.

4 Q. Chemistry. I'm puzzled why you didn't list it
5 on your resume.

6 A. I was -- I was asked very quickly to make a
7 resume because I don't have a regular resume.

8 Q. Did you write a thesis at UCLA?

9 A. I -- I did some thesis, not too much, no.

10 Q. Okay.

11 I'm going to ask you to get me a certified
12 statement of your -- of your transcript, not your
13 grades, but I want to see a trans- -- a certified
14 statement of your transcript from UCLA.

15 All right?

16 MR. MORSEBURG: All right.

17 MR. DAILEY:

18 Q. I'll make that request --

19 MR. MORSEBURG: Requests for production are
20 directed to me.

21 MR. DAILEY: Okay. Well, that's what I'm going to
22 ask for.

23 Q. So I would like you to get that for me one way
24 or another.

25 All right. So you have a master's degree that you

0029

1 didn't report in your expert report.

2 Let me ask you this: What fields of study have you
3 been involved in since you got this master's degree?

4 A. I -- I started my own company.

5 Q. And have you -- Have you been involved in any
6 fields of study?

7 A. No.

8 Q. Okay. That's fine.

9 A. Specifically in chemistry or --

10 Q. Chemistry, engineering, anything.

11 A. Not in -- not in scientific level, no.

12 Q. Okay.

13 A. In a business level.

14 Q. Okay. Fine.

15 Mr. Minissian, have you ever been qualified by a
16 court to testify as an expert witness?

17 A. Yes.

18 Q. And can you tell me what the subject was?

19 A. Had to do laundry waste water.

20 Q. And when was that?

21 A. Six months ago.

22 Q. And what was the name of that case?

23 A. It was a case against American Maintenance

24 Textile versus New Century.

25 Q. Versus who?

0030

1 A. New Century.

2 Q. New Century.

3 And what court was that in?

4 A. Norwalk Superior Court.

5 Q. In what state?

6 A. California.

7 Q. California.

8 You said Norwalk. I thought Connecticut.

9 A. No, Norwalk.

10 Q. Sorry. I'm kind of parochial.

11 A. Down the street from here.

12 Q. All right.

13 And you said that was the superior court?

14 A. Yes.

15 Q. Okay.

16 What was the outcome of that case?

17 A. I'm not too sure.

18 Q. Okay.

19 For -- On behalf of which party did you testify?

20 A. American Maintenance Textile.

21 Q. And what was the nature of your testimony?

22 A. Nature of my testimony to verify the amount of
23 volume of laundry generates washing fabric textile.

24 Q. Can you tell me some more about that?

25 A. There was American Maintenance Textile --

0031

1 Textile Maintenance purchased New Century laundry
2 facility in Long Beach.

3 Q. Yes.

4 A. There was a water discharge issue that was not
5 applied to the purchase, and there was discrepancy on
6 the permits. So I was asked to offer my services to
7 state how much water the laundries use annual basis and
8 the cost that it required to discharge that water to the
9 sewer.

10 Q. Thank you.

11 And how were you qualified as an expert witness in
12 that case?

13 A. I -- I been dealing with laundries for a long
14 time and we set up the wash formulas for them, and per
15 wash formula basis, you know how much water is consumed
16 washing fabric.

17 Q. Okay.

18 A. And so I offered our services to determine
19 exactly how much water was required to discharge.

20 Q. Did you testify at a deposition or at trial or
21 both?

22 A. Oh, I had a deposition and -- and also trial.

23 Q. Okay.

24 And did the judge declare that you were an expert
25 witness at that trial?

0032

1 A. I couldn't tell you that.

2 Q. Did the judge allow you to testify?

3 A. Yes.

4 Q. Okay.

5 Besides this testimony six months ago, have you
6 otherwise ever been qualified as an expert witness?

7 A. We had a bleach case.

8 Q. What was the bleach case?

9 A. That was a lawsuit filed against us. Someone
10 claiming that they got hurt from a bleach -- chlorine
11 bleach.

12 Q. Oh, so you weren't an ex- -- You were -- You
13 were a witness for the defendant in that case; is that
14 correct?

15 A. Defendant was Norchem.

16 Q. Yes. Your company was sued?

17 A. That's right.

18 Q. So you weren't an independent expert in that
19 case; correct?

20 A. Right, not independent.

21 Q. All right.

22 I'm going to ask you to look at Exhibit 154 again,
23 which is your first report, and go back to your resume,
24 the Appendix "A."

25 A. Uh-huh.

0033

1 Q. And I'm going to ask you to look at page
2 HS2 002217, which is one of the -- It's the last page of
3 your resume. The last page of your resume, not --

4 A. 22?

5 Q. 2217. That page (indicating).

6 A. Okay.

7 Q. Do you see where it says "Deposition
8 Testimony"? Do you see that?

9 A. Yes.

10 Q. And it lists the Norchem case; correct?

11 A. That's -- That's right.

12 Q. But it doesn't list any other case. Can you
13 tell me why you didn't list the Norwalk, California
14 American Maintenance case?

15 A. Like I said, this was a -- I did it very
16 quickly so I don't -- I didn't remember putting
17 everything down.

18 Q. Is there anything else you forgot to put in
19 Exhibit 154?

20 A. Can't remember right now.

21 Q. How much did you bill to provide your services
22 under exhibits for both this report and the supplemental
23 report?

24 A. How much I got paid?

25 Q. Yeah or how much you billed.

0034

1 A. How much I billed. I don't remember. My
2 office knows.

3 Q. Okay.

4 I'm going to ask you now to turn to the next page
5 of your report, Exhibit Number 154.

6 A. Okay.

7 Q. And that's listed as "Appendix 'B'" or it's
8 captioned as "Appendix 'B'" at the top; is that correct?

9 A. Exhibit 154?

10 Q. 154. And I'm going to ask you to look at --

11 A. Oh, okay.

12 Q. -- page 0 -- HS2 002218.

13 A. Oh, okay.

14 Q. It's captioned "Appendix 'B'" at the top.

15 Do you see that?

16 A. Yes.

17 Q. Okay.

18 Did you prepare Appendix "B"?

19 A. Yes.

20 Q. When did you prepare it?

21 A. Can't remember.

22 Q. Okay.

23 I'm going to ask you to go to the next page of

24 Appendix "B" which has the Bates numbers HS2 002219.

25 A. HS2?

0035

1 Q. Yes. It's the next page of Appendix "B."

2 A. Okay.

3 Q. And look at the bottom, and it says "Riggs and

4 Klipper, Textile Laundering" Tex- -- "Technology."

5 A. Uh-huh

6 Q. Do you see that?

7 A. Yeah.

8 Q. And you list that as a document that you

9 reviewed. Can you tell me what that is?

10 A. That's the Textile Rental laundry textbook that

11 is widely used in the laundry industry.

12 Q. Okay.

13 A. It was published in 2005.

14 Q. Is it a -- Published by the Textile Rental

15 Services of America or some other public -- publisher?

16 A. No, it's published by TRSA, called Textile

17 Rental Association --

18 THE REPORTER: Sorry, "published by"?

19 THE WITNESS: TRSA, which is Textile Rental

20 Association of America.

21 MR. DAILEY:

22 Q. Can you tell me what in that textbook you

23 referenced -- or you reviewed, excuse me?

24 A. Their textbook includes numerous wash formulas

25 for healthcare, commercial linen and industrial.

0036

1 There's -- It's a full -- full guideline for laundry,

2 people involved in the laundry industry.

3 Q. And what in particular with respect to the wash

4 formulas did you review?

5 A. They have a geri- -- geriatric -- geriatric

6 pads that also healthcare laundry facilities that

7 utilize formulas from the textbook which every company

8 involved in the industry utilizes these formulas.

9 Q. Okay.

10 And what did you do with those formulas?

11 A. Nothing. I just -- I was asked to provide

12 information so I --

13 Q. To whom?

14 A. -- so I generated a document to Doug Morseburg.

15 Q. What document did you generate to Doug

16 Morseburg?

17 A. The textbook and the other ones involved.

18 Q. Okay.

19 I think we'll come back to that in a few minutes,

20 but why don't we press ahead. Would you go to the next

21 page, which is -- has the Bates number HS2 02220.

22 Do you see that? Do you see that page?

23 A. HS2, yeah.

24 Q. Okay.

25 The first document listed at the top is something

0037

1 called, in part, a "Wash formula guide used to" watch --

2 "wash Posey product samples met CDC guidelines."

3 Do you see that?

4 A. Yes.

5 Q. Did you provide this document to --

6 A. Yes.

7 Q. -- Mr. Morseburg? You did.

8 A. Uh-huh.

9 Q. When did you provide it?

10 A. It says February 14.

11 Q. Okay.

12 And the next document says "Each wash and dry cycle

13 has been documented and recorded on a log sheet to track

14 product performance."

15 Do you see that?

16 A. Yes.

17 Q. Did you provide this document to Mr. Morseburg?

18 A. No, I have not provided it.

19 Q. Why is that?

20 A. I wasn't asked.

21 Q. Did -- Did Mr. Morseburg instruct you to

22 provide copies of every document that you had produced

23 during the course of your study?

24 A. They are recorded there at the laundry.

25 Q. Do you have --

0038

1 A. I don't have it on hand.

2 Q. Do you -- And -- And Mr. Morseburg didn't ask
3 you to produce them at this deposition this morning?

4 A. He asked me last night and I was out of town.
5 So when I got in late, I didn't get to the laundry.

6 Q. How far is your laundry from here?

7 A. Oh, quite a way.

8 Q. Uh-huh.

9 A. At least an hour drive.

10 Q. Where is the laundry located?

11 A. El Monte. El Monte.

12 Q. El Monte?

13 A. Yeah.

14 Q. Is that a Norchem facility?

15 A. No, it's an independent laundry.

16 Q. What kind of independent laundry?

17 A. It's a commercial laundry.

18 Q. What do you mean by "commercial laundry"?

19 A. Commercial laundry that washes sheets and
20 towels. They have washing machines.

21 Q. For paying customers?

22 A. For paying customers.

23 Q. So, for example, a hotel might send their
24 laundry to them?

25 A. That's correct.

0039

1 Q. Does it -- Does it do institutional laundry for
2 healthcare facilities?

3 A. No. We use the facility to -- to -- We took
4 one of their washers to do the test.

5 Q. You rented time on one of their machines --

6 A. Yes.

7 Q. -- is that fair to say?

8 So a -- a washing machine and a drying machine?

9 A. Yes.

10 Q. Okay.

11 Have you reviewed the documentation that is kept at
12 this laundry facility in El Monte?

13 A. No, I have not.

14 Q. Do you know whether or not the 100 cycles or
15 any of the 100 cycles was, in fact, conducted in
16 accordance with your protocol?

17 A. It's in the -- The washer has a washer
18 controller. It's a computer.

19 Q. Yes.

20 A. All the formulas are in that processor.

21 Q. All right.

22 But have you reviewed it to see that it actually
23 did what you thought it was going to do?

24 A. I provided the information for my technician to
25 do the test. I did not personally wash them.

0040

1 Q. Did you go and review whether, in fact, your
2 technician had done the --

3 A. I'd given the written copy for them to follow.

4 THE REPORTER: I'm sorry. I need you to wait for
5 the question to finish. I didn't get the last couple of
6 words.

7 THE WITNESS: Sorry.

8 THE REPORTER: I have "Did you go and review
9 whether, in fact, your technician" --

10 MR. DAILEY:

11 Q. -- had done the washing and drying in
12 accordance with your protocol?

13 A. No, I did not.

14 Q. Okay.

15 Did you give him a computer code?

16 A. He has the computer code.

17 Q. He has. Did you -- Did you verify that the
18 computer code included your protocol?

19 A. It's not a protocol. It's basically --
20 washer's a microprocessor.

21 Q. Okay.

22 But does the microprocessor, whatever you want to
23 call it, incorporate the wash formula guide used to wash
24 Podey -- Posey products which you gave to Mr. Morseburg?

25 A. Yes.

0041

1 Q. How do you know that?

2 A. Because it's in there.

3 Q. How do you know it's in there?

4 A. Well, what I'm saying is when I go visit, I can
5 get the copy of it.

6 Q. All right.

7 You should have visited -- You knew you were going
8 to be deposed today; is that correct?

9 A. Well, I've been -- I've been real busy.

10 Q. So -- So you would -- You can just blow off
11 this deposition? Is that your testimony?

12 A. I'm not --

13 MR. MORSEBURG: Object.

14 THE WITNESS: I'm not saying --

15 MR. MORSEBURG: Don't answer that question. It's
16 argumentative.

17 MR. DAILEY:

18 Q. Well, I'd like to know --

19 MR. MORSEBURG: And harassing.

20 MR. DAILEY:

21 Q. -- Mr. Minissian why you didn't produce
22 documents that we specifically asked you to produce.
23 And when you didn't produce them, we asked you to
24 produce them today.

25 A. I was asked late and I was out of town.

0042

1 Q. Do you have anybody who works with you? You're
2 a vice president.

3 A. I have people work, but they're all busy, too,
4 so --

5 Q. They're all busy. Okay. All right.

6 The next document down listed on your list of
7 documents that you reviewed is something called "Posey
8 samples have been inspected after each wash to monitor
9 product performance in low and high temperature wash
10 according to CDC guideline."

11 Did you produce that document to Mr. Morseburg?

12 A. Yes, I did.

13 Q. And where is that document?

14 A. What document? I physically -- visually
15 inspected.

16 Q. Did you pro- -- produce a report?

17 A. No.

18 Q. What did you produce?

19 A. My report is which is the one right here
20 (indicating) says "physically we did not see any damage
21 to the Posey Hip Protectors."

22 Q. Did you keep any notes at -- at the time you
23 inspected after each wash and dry cycle?

24 A. It's -- You have the samples, I mean, you look
25 at the samples.

0043

1 Q. But Mr. Minissian, I'm asking you what you did.

2 A. What I did what?

3 Q. You're the -- You're the -- You are the

4 supposed expert here. I want your opinion. And I want

5 to know if after each cycle you personally reviewed the

6 samples that had been washed or not?

7 A. No, I did not, not after the wash. I -- I saw

8 the final result when it came back.

9 Q. Okay.

10 So the only time you saw the documents is after

11 they had supposedly been washed -- I'm sorry, the

12 products -- was after they had been supposedly --

13 A. That's correct.

14 Q. -- washed 100 times?

15 A. That's correct. I saw the product, final

16 product.

17 Q. Okay.

18 And what inspection documents did you provide to

19 Mr. Morseburg?

20 A. There's no inspection document. Again, it's a

21 physical observation.

22 Q. Okay. Okay.

23 And the only observation is what you state in your

24 report; is that correct?

25 A. That's correct.

0044

1 Q. So there's no inspection log; is that correct?

2 A. The inspection logs are the facts what's in the

3 bag -- in the box.

4 Q. There -- there are logs in the bag?

5 A. No. There's signature of -- my signature on

6 the -- on the bags, what they are, and what -- how many

7 times they were washed, that's it.

8 Q. Somebody told you they were washed 100 times

9 and you signed your name; is that correct?

10 A. That's correct.

11 Q. So you don't know whether they --

12 A. My employees.

13 Q. You don't know whether they were washed 10

14 times, one time, 100 time, 1,000 times, do you?

15 A. My employees were instructed to do exactly what

16 I told them.

17 Q. Okay.

18 And how did you confirm?

19 A. I have the controller at the plant which tells

20 me how many times the -- this formula was washed.

21 Q. And what is the controller you're referring to?

22 A. Microprocessor washer.

23 Q. Okay.

24 And tell me how that works.

25 A. We have a specific formula that was made for

0045

1 Posey to wash these items.

2 Q. Okay.

3 And is that -- Let's stop right there. That

4 specific formula. Is that written down someplace?

5 A. It's in the controller.

6 Q. Okay.

7 How did it get in the controller?

8 A. My technician programmed it.

9 Q. Okay.

10 So you must have given your technician -- You must

11 have given him or her some instruction; correct?

12 A. That's correct.

13 Q. What instruction did you give the technician?

14 A. I give him the samples. I told him what they

15 need to be done. I told him that they -- These are the

16 formulas that he needs to put in the washer controllers.

17 Q. So where are the formulas written down? That's

18 what --

19 A. I don't have it with me.

20 Q. Are they in your head?

21 A. Yes.

22 Q. Are they someplace else?

23 A. No, they're -- they're in the computer. He's

24 got them -- he's got them in the washer controllers.

25 Q. Are they -- Are they in a textbook or a

0046

1 reference someplace?

2 A. Again, in -- it's in the microprocessor. It

3 has to be put on the paper.

4 Q. You -- They've been inputted into the

5 microprocessor --

6 A. Right.

7 Q. -- correct?

8 A. That's correct.

9 Q. And apparently the microprocessor can somehow

10 print them out; is that correct?

11 A. No. We just go through it and handwrite it and

12 put them in a -- in a laptop and print it.

13 Q. So there's a microprocessor someplace. What is

14 this microprocessor? Are we talking about a laptop or

15 what?

16 A. No, no. It's a -- It's a little microprocessor

17 that controls the cycle -- wash cycle of the washing

18 machine. So you physically go there, enter the steps of

19 wash cycle.

20 Q. Okay.

21 A. Temperatures, steam, drains, whatever. And

22 that microprocessor writes the formula the way you want

23 to wash things. You put the product name, load size,

24 how many pounds you're going to wash, and then you put

25 the steps and temperatures and then -- then when you put

0047

1 the item inside the washer, close the door, you press
2 the formula number, you start running until it finishes
3 and extracts.

4 When it's finished, then you take it out, put them
5 in the dryer and dry it. Well, once you dry, bring it
6 back and wash it again. That's the way it was done.

7 Q. All right.

8 And where is there a record of what was entered
9 into that microprocessor?

10 A. The technician has a copy that I told him to
11 enter into the microprocessor.

12 Q. Okay.

13 A. Again, for us it's a -- it's a very common
14 thing. We do this all the time. It's --

15 Q. Right.

16 But you were doing this as an expert witness;
17 correct?

18 A. I was asked to wash the items.

19 Q. Were you -- Were you asked to do that as an
20 expert witness?

21 A. I'm not -- I don't know what you want to call
22 expert witness, but I was asked to wash and see if the
23 product will handle the wash formulas according to CDC
24 Guidelines.

25 Q. Okay.

0048

1 So I need -- I need you to tell me what the formula

2 is --

3 A. Uh-huh.

4 Q. -- or where it was recorded. And then I need

5 you to tell me how that formula got into the computer

6 and that -- that was on the microprocessor on the

7 washing and drying machine, and then I need you to tell

8 me how that was recorded so we know that, in fact, 100

9 cycles were done according to your formula.

10 Okay. Is there any record of that?

11 A. The controller keeps track of how many times

12 the formula was selected.

13 Q. Okay.

14 The controller is on the machine?

15 A. Yes, on the -- on the machine.

16 Q. And can that be printed out?

17 A. You cannot print it out, but you can physically

18 see it.

19 Q. You can physically see it.

20 After the 100 washings were done of the Posey

21 equipment, was that -- of the Posey product, excuse

22 me -- was that laundry equipment shut down so no more

23 formulas were entered into the machine?

24 A. No, no. They -- they use the washer every day.

25 Q. So how do we know -- Well, so how do we find

0049

1 what was done when your 100 cycles were done?

2 A. Formula has 31 formulas.

3 Q. Yes.

4 A. Which they wash sheets, towels, pillow cases.

5 There's extra formulas that are not being used. So

6 he -- he took one of the formulas, made a Posey hip

7 protector wash formula, so that formula was used to wash

8 these items.

9 Q. Okay.

10 And how do we know that -- what formula of those 31

11 he chose?

12 A. What do you mean how -- how do you know?

13 Q. Is there --

14 A. A formula 5, formula 10, whatever he selected.

15 Q. But I'm asking you how do we know what he

16 selected? That's what I need to know.

17 A. Well, you're asking the question how do you

18 know that things are washed right.

19 Q. No, no. I'm on --

20 A. No.

21 Q. No. I'm not even yet -- there yet. We got a

22 long way to go before we get there.

23 A. Yeah.

24 Q. I'm asking how do we know what the formula is

25 you gave to the technician, what formula he entered into

0050

1 the computer, and what record there is to show that the

2 formula he entered into the computer --

3 A. Uh-huh

4 Q. -- is the formula you gave him?

5 A. Well, we can go verify.

6 Q. And I'm asking you how do we verify that?

7 A. Just go look at the microprocessor.

8 Q. Okay.

9 And does the microprocessor have --

10 A. It retains memory.

11 THE REPORTER: One at a time please.

12 MR. DAILEY:

13 Q. Does the microprocessor say on, for

14 example, "February 13th, Posey load 1, 2, 3, 4, Formula

15 X"?

16 A. It does not give you a date. It gives you a

17 number -- the formula number and a formula procedures.

18 Q. Does it identify what was laundered?

19 A. No, it just says "Posey item."

20 Q. It says "Posey item"?

21 A. Yeah.

22 Q. Okay.

23 And does it list the formula?

24 A. Yes.

25 Q. Okay.

0051

1 And it's -- It has the chemical and wash settings

2 and heat settings and so on and cycle --

3 A. That's --

4 Q. -- times?

5 A. That's correct.

6 Q. Okay.

7 So it will -- We can get that, we can extract that

8 by looking into that record; is that correct?

9 A. That's correct.

10 Q. Okay.

11 What's the technician's name?

12 A. Jaime Gastelum.

13 Q. Would you spell that?

14 A. Gastelum, G-A-S-T-E-L-U-M.

15 Q. And first name?

16 A. Jaime.

17 Q. How do we spell that?

18 A. J-A- -- J-A-I-M-E.

19 Q. And for whom does he work?

20 A. He works for Norchem.

21 MR. DAILEY: Can we take a break for a few minutes?

22 MR. MORSEBURG: Sure.

23 THE VIDEOGRAPHER: We're going off the record. The

24 time is 10:06.

25 THE VIDEOGRAPHER: We are on the record. The time

0052

1 is 10:14.

2 MR. DAILEY:

3 Q. Mr. Minissian, I'm going to still refer you to
4 the last page of the -- of Appendix "B" to your first
5 report, and I'm -- I want to return just for
6 clarification to the first item on that page, which is
7 HS2 002220. And it says, "Wash formula guide used to
8 wash Posey product."

9 Do you see that?

10 A. Uh-huh.

11 Q. Now, you said you gave that guide to
12 Mr. Morseburg; correct?

13 A. Guide?

14 Q. Yes. That's what you described it as, a wash
15 formula guide. And you said you gave it --

16 A. Yes. It's wash formula. Basically it's a
17 formula that's in the controller.

18 Q. Okay.

19 A. In the microprocessor.

20 Q. Okay.

21 And -- And if you remember what items are
22 included -- I'm not asking you for the specific
23 formula -- but what items would have been included in
24 that document you gave to Mr. Morseburg?

25 A. What item -- do you mean items?

0053

1 Q. Well, does it say what the laundry detergent
2 is, how much water is used, what the cycle time is, what
3 the heat is, what the bleaches are, et cetera?

4 A. Yeah. Wash for- -- Excuse me. Wash formula
5 guide basically says the item.

6 Q. Yes.

7 A. Formula time for each step, the temperature and
8 the chemicals and the titration levels.

9 Q. Okay.

10 And the "titration levels." What do you mean by
11 that?

12 A. PH, alkalinity -- alkalinity, parts per million
13 on the bleach.

14 Q. Okay.

15 A. The basic standard thing that we always do, you
16 know, at the laundry.

17 Q. And does it also have associated with it the
18 guide for drying?

19 A. Not the wash.

20 Q. Not the drying?

21 A. Not the wash.

22 Q. Oh, is there a separate guide for drying?

23 A. Drying is basically you put them in the dryer.

24 When it's dry, you take it out.

25 Q. Okay.

0054

1 But is there something that said dry it at a

2 certain temperature for so many minutes?

3 A. No. It's -- There's a dial on the dryer that

4 you set to dry.

5 Q. Okay.

6 And -- And is there a temperature setting on the

7 dryer?

8 A. Yes.

9 Q. What's the temperature setting you used?

10 A. We -- We tried at 145. We dried effectively

11 so -- That's what I was told.

12 Q. You were told that it dried effectively at 145

13 degrees; is that correct?

14 A. That's correct.

15 Q. And does the dryer have a temperature gauge on

16 it or is it just sort of a dial?

17 A. It's a dial.

18 Q. Okay.

19 A. You set whatever temperature you want to dry

20 it.

21 Q. Okay.

22 And the dial is dialed in at 150, 140, whatever you

23 want?

24 A. You can select whatever temperature you want.

25 Q. Okay.

0055

1 So is that a digital statement and it says this is
2 the temperature it's heating?

3 A. No. It's a circular thing and you set the
4 temperature that you want to dry it.

5 Q. Okay.

6 And -- And did you calibrate the dryer?

7 A. The dryer's being used every day, 20 hours a
8 day. So they're not -- They're not only drying the
9 Posey item, but they also dried everything else with it
10 every day. It's a running operation so it's --

11 Q. Were the Posey products dried with other items?

12 A. No. They dried in a dryer that they were
13 using.

14 Q. But just the Posey items were in the dryer at
15 the time?

16 A. That's correct.

17 Q. Okay.

18 How did you know or how were you able to verify
19 that a setting of 145 or 150 was, in fact, the actual
20 temperature on the dryer?

21 A. My technicians carry a laser temperature probe.

22 Q. Yes.

23 A. They can -- They check the temperature on the
24 washing machines. That's -- That's common practice for
25 them, to evaluate the temperature of the wash.

0056

1 Q. Uh-huh.

2 A. Also they use a laser temperature probe to

3 measure the temperature on the dryers.

4 Q. And did Mr. Gastelum maintain a record of the

5 temperatures that he was able to record?

6 A. I don't know if he kept a record or not.

7 Q. How do you know that he set the machine for 145

8 degrees?

9 A. I told him to try at 145 drying time because in

10 our experience with the hospital diapers, because

11 they're plastic material, they don't dry very high

12 temperatures.

13 Q. Okay. All right.

14 So you gave Mr. Morseburg a wash formula guide for

15 washing; correct?

16 A. I have not given him anything yet.

17 Q. Oh, you told me you gave him some- -- You gave

18 him a copy of the guide on February 14th, 2006.

19 A. He asked me yesterday to give him a copy. I

20 say, "I don't" -- "I came late in town."

21 Q. Yes.

22 A. But I don't remember if I gave him prior

23 that -- to that or not.

24 Q. Okay.

25 Oh, you don't remember?

0057

1 A. I don't remember if I gave him a copy of it.

2 Q. All right.

3 Regardless of whether you gave it to him or not,
4 was there a formula guide that you produced that set out
5 all the specifications for washing the Posey products?

6 A. I get the formula guide verbally to Jaime
7 Gastelum.

8 Q. Did you write it down?

9 A. No.

10 Q. Okay.
11 Did you give him a guide for both low temperature
12 and high temperature?

13 A. Yes.

14 Q. Okay. Was --

15 (Interruption in proceedings.)

16 MR. DAILEY:

17 Q. Okay.

18 Now, next it says -- and staying on the same page,
19 just so we can get everything straight here -- it says
20 "Each wash and dry cycle has been documented and
21 recorded on a log sheet"; is that correct?

22 A. That's correct.

23 Q. Is that what it says?

24 A. Yes.

25 Q. Okay.

0058

1 And there is a log sheet someplace?

2 A. I think Jaime has the log sheet. I called him
3 earlier this morning. He says he has the log sheet. He
4 has to look for it.

5 Q. And next it says, "Posey samples have been
6 inspected after each wash." And was it your technician
7 who did the inspection?

8 A. I asked him after each wash to look at the
9 samples and make sure they were not damaged or any kind
10 of deterioration of the fabric before he -- he went on
11 to the next load.

12 Q. And as far as you know, there's no log of his
13 inspection; is that correct?

14 A. I can't tell you.

15 Q. Have you asked him?

16 A. No.

17 Q. The last item says, "Included a Genie wash test
18 piece in the wash cycle with Posey samples to determine
19 chlorine bleach intensity and effective stain removal."

20 Did I read that correctly?

21 A. That's correct.

22 Q. First, would you tell me what a Genie wash test
23 piece is?

24 A. It came out of the bottle. Genie wash test
25 piece is a -- is a sample, a little cloth has different

0059

1 type of -- there's swatches that you -- As a common
2 practice for us to do any new item, to see intensity to
3 chlorine and alkalinity and temperature, to verify that
4 you're not overinjecting product and the formula is --
5 being washed properly, Genie test piece is manufactured
6 by a company called Artex. It's an independent company.

7 Q. Did you retain these samples?

8 A. I don't know. I asked him to do one. I don't
9 know if he retained it or not.

10 Q. Okay.

11 A. It's basically for our application, to make
12 sure that the chemistry is right.

13 Q. Uh-huh.

14 Is it your practice to retain these samples?

15 A. Not necessarily.

16 Q. Okay.

17 So do you have any way of verifying that, in fact,
18 the formula you thought was being punched into the
19 machine was, in fact, punched into the machine?

20 A. Like I -- Like I said, the formula is still in
21 the controller, so you can go verify it.

22 Q. Right. We can -- We can verify what was
23 punched in perhaps, but can we verify that that actually
24 was loaded into the machine without the Genie?

25 A. I don't understand the question.

0060

1 Q. Okay.

2 Well, you told me that the -- the Genie is used to

3 verify the -- at least the bleach and temperature

4 levels --

5 A. Uh-huh.

6 Q. -- in the washing machine; correct?

7 A. Yes.

8 Q. Is there any other way to verify that if

9 they're missing?

10 A. The Genie, again, is a chemical test, one-time

11 wash.

12 Q. Right.

13 A. In the beginning you throw them in the washer.

14 It's a one-time test.

15 Q. Right.

16 A. Not 100 time.

17 So when it comes out of the washer, you look at the

18 sample and see if the intensity -- There's a guideline

19 for that to compare. See, Artex provides that who

20 commonly use in every laundry when you wash it.

21 Q. So you did the Genie test only once; is that

22 correct?

23 A. Only one wash only.

24 Q. Okay.

25 So did you do one high-temperature wash and one

0061

1 low-temper- -- and one standard wash or low-temperature

2 wash?

3 A. I -- I cannot tell you if he did multiple or

4 not. I know he did one of them but --

5 Q. Is there any other way to verify that, in fact,

6 the machine operated in accordance -- in accordance with

7 the formula that was punched in?

8 A. We also do titrations --

9 Q. Okay.

10 A. -- to verify the -- the chemical.

11 Q. All right.

12 Were titrations done in this case?

13 A. I don't remember if he did or not.

14 Q. Okay.

15 A. I can verify with him.

16 Q. Okay.

17 Do you know what materials the Posey hip protectors

18 that you washed and dried were made of?

19 A. I think it's a polyester cotton blend. I don't

20 know the exact details, but I think it's a blended

21 product.

22 Q. Okay.

23 And what was the pad made out of that is

24 incorporated in the product?

25 A. I do not know.

0062

1 Q. Okay.

2 Did anybody tell you what it's made out of?

3 A. I have no idea.

4 Q. Did you consider that when you set up the
5 formula for washing and drying?

6 A. No.

7 Q. Aren't the formulas that the textile industry
8 use based on the materials that are to be washed and
9 dried?

10 A. The wash and dry material are -- if there's a
11 tag on the -- on the product says what the recommended
12 wash cycles are, we follow that. If it's not, we
13 basically do, just from our experience, what -- how long
14 it takes to dry and follow the soil characteristic of
15 the fabric and wash according to that. It's basically
16 from our experience in the industry to generate the
17 formulas to wash.

18 Q. So are you telling me that you washed and dried
19 the Posey product in accordance with the label on the
20 products?

21 A. No. We followed the CDC Guidelines.

22 Q. Okay. Well, we're not there yet.

23 Did you develop your formula guide that
24 Mr. Gastelum was to put into the machine on the basis
25 of --

0063

1 A. CDC Guideline.

2 Q. -- the product label or the CDC Guideline?

3 A. CDC. I was told to do by the CDC Guidelines.

4 Q. Okay.

5 And what CDC Guidelines did you use?

6 A. We use the CDC Guidelines for high temperature

7 160 minimum, 25 minutes --

8 THE REPORTER: I'm sorry. "We use the CDC

9 Guidelines for"?

10 THE WITNESS: High temperature wash for 25 minutes

11 and low temperature wash at average of 120.

12 MR. DAILEY:

13 Q. Okay.

14 So that's all that formula guide has in it, just

15 says run this machine for 25 minutes at a certain

16 temperature?

17 A. Yeah. And that wash temperature -- Again, I

18 explained to Mr. -- Mr. Morseburg that the wash time

19 indicates not only the chemistry but also drains time,

20 bleach time. That's part of the whole wash time of

21 25 -- 25 minutes.

22 Q. The entire?

23 A. Formula time.

24 Q. The entire -- When you say "formula time," is

25 that the en- -- from the time you switch the machine on

0064

1 until the time it stops spinning, that's 25 minutes? Is

2 that what you're telling me?

3 A. The temperature -- The 25 minutes that 160

4 degrees is maintained, whether it's a bleach cycle,

5 drain cycle, you know, alkaline cycle, detergent cycle,

6 once you stop dropping the temperature down, then you're

7 out of the -- out of the wash cycle.

8 Q. Okay.

9 So the formula guide you used would have had a wash

10 temperature time for 25 minutes of 160 degrees; is that

11 correct?

12 A. That's correct.

13 Q. Okay.

14 And what about for the low temperature?

15 A. Low temperature was 120. And there's no --

16 There's no time guide on that.

17 Q. Okay.

18 And what -- what -- what guide did you program into

19 the machine?

20 A. We had eight minutes wash, eight minutes

21 bleach, and one minute drain, one minute drain, and two

22 rinses and extract.

23 Q. Okay.

24 And that -- and the 120 degree temperature was

25 maintained throughout?

0065

1 A. Until the final cool rinses.

2 Q. Okay. Okay.

3 A. And they were extracted eight minutes --

4 Q. Okay.

5 A. -- or six minutes, I think.

6 Q. Mr. Minissian, have you ever conducted any
7 research on the impact of water temperature or heat or
8 bleach on materials that are used in healthcare
9 facilities?

10 A. I was involved with the California Title 22
11 over, I guess, 16-some years ago when we had an energy
12 crunch again, California Title 22 is very similar to CDC
13 Guideline of 160 degree for 24 minutes, not 25.

14 When we had energy crunch, we went to State of
15 California, whole association of Textile Rental --
16 California Laundry Association went to State of
17 California and reduce the temperature down to 140 for
18 healthcare.

19 Q. Right.

20 Did you do any research in association with that
21 Title 22 work?

22 A. I was involved with the committee.

23 Q. Okay.

24 But you didn't do any research; is that correct?

25 A. No, we didn't do research, but I was -- I was

0066

1 getting a lot of the reports from VA hospitals on low
2 temperature hospitals, which VA went down to 120 after
3 their research at Colorado State -- Colorado Univers- --
4 University.

5 Q. How do you know they went down to 120?

6 A. Because there was a public report. I think you
7 have copies of the -- some of the low-temperature
8 washing reports.

9 Q. Is this the Blaser report you're talking about?

10 A. I think so. That's one of them.

11 Q. That's just a test, that's not adoption of 120
12 degrees, isn't it?

13 A. There's a VA hospital report that was done at
14 the VA hospital.

15 Q. It was a -- It was a research project; is that
16 correct?

17 A. It was research project, yes.

18 Q. Okay.

19 The hospital didn't adopt 120 degrees, did it?

20 A. The VA Hospitals did.

21 Q. What VA Hospitals?

22 A. VA hospital, Vet- -- Veteran Administration.

23 Q. How -- How do you know that?

24 A. Because they have a report.

25 Q. All right.

0067

1 I'm going to ask you to tell me the name of that
2 report.

3 A. I don't know if there's a copy of the reports
4 or not.

5 Q. Is it -- Is it something that you reviewed for
6 purposes of this case?

7 A. No. They were copies that I provided to them,
8 to Doug Morseburg, what I had in my file --

9 Q. Okay.

10 A. -- regarding low-temperature washing.

11 Q. Okay.

12 And you say there's a report someplace that says VA
13 Hospitals adopted 120 degree?

14 A. And they are continuing doing it.

15 Q. And they are continuing it. It's even better.

16 A. They continue washing at 120.

17 Q. That's terrific. I want to know where that
18 document is because that's going to be a surprise to me.

19 So tell me where that document is.

20 A. I don't -- I give what I have.

21 Q. Okay.

22 What -- Describe the document.

23 A. Based on the research that VA hospital did on
24 low-temperature washing which claim that with
25 chemical -- with chemistry they can disinfect and

0068

1 provide hygienically-clean linen, that high temperature
2 was not required.

3 So throughout the country all the VA hospital
4 dropped their wash temperatures to 120.

5 Q. Okay.

6 And I want you to tell me -- You know that for a
7 fact?

8 A. That's a fact.

9 Q. Okay.

10 And what's the source of that information, that
11 fact?

12 A. You can -- You can ask the VA hospital, not --

13 Q. No, no. I know what the answer is. I want to
14 know where you got your answer.

15 A. Where I got my answer?

16 Q. Yeah.

17 Where did you find out that VA Hospitals across the
18 country --

19 A. VA hospital --

20 THE REPORTER: One at a time.

21 MR. DAILEY:

22 Q. Stop, stop, stop.

23 Where did you -- Where did you get your information
24 and where is the information that leads you to believe
25 that not only have VA Hospitals adopted a laundry

0069

1 temperature of 120 degrees, but they're continuing to

2 use a laundry temperature of 120 degrees?

3 A. Where is the document for that?

4 Q. Yes.

5 A. I don't have it on hand.

6 Q. Okay.

7 That's fine. There are a lot of documents that you

8 don't have on hand today, but where is the document?

9 A. Well, I can contact VA hospital, get it --

10 Q. Okay.

11 A. -- or you can contact also.

12 Q. What's --

13 A. It's a public infor- -- it's a public

14 information.

15 Q. Okay.

16 And -- And when was that document published, if you

17 know?

18 A. Several years ago.

19 Q. Okay.

20 A. At least 15 years ago.

21 Q. At least 15 years ago.

22 What's the author's name?

23 A. I don't remember.

24 Q. Okay.

25 All right. That's a document -- That's a document

0070

1 that was done some 15 -- Do you have that document?

2 A. I don't -- I had what I give them. I don't

3 know if it was one of them or not. I don't remember

4 now.

5 Q. Okay.

6 Now, you said this document was produced some 15

7 years ago; correct?

8 A. The research was done at one of the VA

9 Hospitals, I remember --

10 Q. Okay.

11 A. -- and based on that report, they decided to

12 drop the temperature down.

13 Q. Okay.

14 Now, that's what I'm after. Where is the document

15 that says the VA Hospitals, based on that report that

16 was done 15 years ago --

17 A. I don't --

18 Q. -- says -- wait, wait, wait, wait -- says VA

19 Hospitals adopted 120 degrees as the wash temperature

20 and not only that, continue to use 120 degrees. That's

21 what I'm after.

22 A. I don't have it, but I can try to find out --

23 Q. Okay.

24 When did you last see that document?

25 A. That's been a while.

0071

1 Q. Okay.

2 When you say it's been awhile, what's awhile?

3 A. 12, 13 years ago.

4 Q. Okay.

5 Well, how do you know what you saw 12 or 13 years
6 ago is what they do now?

7 A. I spoke with another chemical vendor. He has a
8 contract with the VA hospital.

9 Q. What's his name?

10 A. Company's name is Gurtler. Gurtler.

11 Q. G-E-R-T-L-E-R?

12 A. G-U-R-T-E- -- G-U-R-T-L-E-R.

13 They're one of our competitor.

14 Q. Okay.

15 And what's the person's name at Gurtler?

16 A. I don't have it. Their -- their rep you mean?

17 Q. The person who told you that all the VA
18 Hospitals are continuing to use 120-degree wash
19 temperature.

20 A. I -- I -- I heard that. I'm not saying I spoke
21 with someone. I heard that Gurtler is washing down at
22 120.

23 Q. Okay. Okay.

24 Well, if you can find a document from Gurtler or
25 the VA that states that the VA has adopted or is, I

0072

1 would like you to produce that document that says the VA
2 has adopted 120-degree wash cycle temperature and is
3 continuing to use that. That will be helpful.

4 Mr. Minissian, can I ask you, have you ever
5 conducted any research on infections, infectious control
6 or decontamination of materials laundered in healthcare
7 facilities?

8 A. No.

9 Q. Now, let me take you back, and I apologize.
10 I'm not trying to beat a dead horse, although it
11 probably seems like that to you, but -- but let me take
12 you back again to the last -- to HS2 002220, part of
13 Appendix "B."

14 A. Uh-huh.

15 Q. I think you still have it there. And again,
16 I'm -- I'm going to ask a couple more questions about
17 this wash formula guide. And -- and this was the --
18 this is the specification for temperature and time
19 and -- and cycles and bleach that you used for the 100
20 cycles; is that correct?

21 A. That's correct.

22 Q. Did you develop that from any source, the
23 formula itself?

24 A. Yes. The -- Basically the source is CDC
25 Guideline.

0073

1 Q. Did you use anything else?

2 A. I -- I looked at the laundry textile book as

3 a -- because we use that as our Bible.

4 Q. Okay.

5 And what did you --

6 A. To compare that.

7 Q. Was there a formula in the laundry textile book

8 that you used?

9 A. No, because none of the laundry textile book

10 formulas comply with the CDC Guidelines.

11 Q. Okay. Okay.

12 The formula you used for these launderings, has

13 that been peer reviewed by any people who have similar

14 training to you or people who have training in

15 infectious disease control or in laundering materials

16 that are used in hospitals and other healthcare

17 facilities?

18 A. Someone by independent you mean?

19 Q. Yes.

20 A. No.

21 Q. Have you asked the CDC or anyone associated

22 with the CDC to review the formula you used for these

23 100 washings for compliance or verification of

24 compliance with the so-called CDC Guidelines?

25 A. No.

0074

1 Q. Okay.

2 Do you know of any healthcare facilities that
3 actually wash hip protector and similar garments
4 according to the formula you washed these Posey hip
5 protectors with?

6 A. Frankly, I've not seen them out there. It's
7 the first time I've been exposed to this -- this item.

8 Q. Okay. Fair enough.

9 You brought with you this morning all of the hip
10 protectors that were washed and dried during your test;
11 is that correct?

12 A. That's correct.

13 Q. And where have those garments been since
14 February of 2006?

15 A. They were sitting in our office in a box.

16 Q. Okay.

17 When did you physically inspect the documents? I'm
18 sorry, the products, I apologize.

19 A. When they came back from the laundry, I -- I
20 looked at it as soon as they returned.

21 Q. Okay.

22 Tell me what you did.

23 A. I individually looked at with my rep, went
24 through the items, looked at each item.

25 Q. And -- And is that the point at which you

0075

1 signed the garments?

2 A. No. I was -- The items were sitting in our
3 office awhile back. I mean, all this time actually they
4 were sitting. Recently, only a week ago, they were
5 returned back to the Sheldon & Mak because someone
6 requested that they wanted -- Someone from your com- --
7 your -- your firm wanted to take a look at it.

8 Q. That's correct.

9 A. So --

10 Q. But -- But what I'm asking you is you
11 apparently saw the garments that had been washed for the
12 first -- You saw them for the first time --

13 A. Right.

14 Q. -- after at least some of them were washed 100
15 times in February; is that correct?

16 A. Yes.

17 Q. Is that when you put your signature on the
18 garments?

19 A. No.

20 Q. When did you put your signature on the
21 garments?

22 A. Two months ago, a month and a half ago. I
23 don't remember exact date, but it was not too long ago.

24 Q. So -- So you didn't sign them at the time you
25 inspected them; is that correct?

0076

1 A. No, I did not.

2 Q. Who told you to sign them?

3 A. I was asked to sign -- sign each one of them

4 individually.

5 Q. Okay.

6 Who asked you to do that?

7 A. Sheldon & Mak.

8 Q. Okay.

9 Where did you sign them?

10 A. On the plastic bags.

11 Q. Yeah, I know that. Sorry. Where physically

12 were the garments when you signed them?

13 A. At our office at Norchem.

14 Q. At your office.

15 And had they been at your office all that time?

16 A. All that time.

17 Q. And you signed -- Did you sign the garments or

18 the plastic bags?

19 A. No. We signed the -- I think we signed the

20 material itself.

21 Q. Okay.

22 And when you signed the material, did you also sign

23 off a temperature on the material?

24 A. Yes.

25 Q. Okay.

0077

1 How did you know that when you wrote 160 degrees on
2 a garment that it had been washed and dried at 160
3 degrees?

4 A. Because they were brought and separated with --
5 with that temperature. They were -- they were
6 identified what temperature they were washed.

7 Q. Okay.

8 And how were they identified?

9 A. They were identified by the -- in the plastic
10 bag, piece of paper.

11 Q. Okay.

12 It was a piece of paper. Did it have the
13 technician's name on it?

14 A. No. I know who did it so --

15 Q. Did you recognize the handwriting?

16 A. Well, only one person was in charge of doing
17 this so --

18 Q. Okay.

19 Well, did you recognize Mr. Gastelum's --

20 A. I didn't pay attention to his handwriting, but
21 there were temperatures.

22 Q. Okay.

23 Were there dates?

24 A. Don't recall.

25 Q. Did it have number of cycles?

0078

1 A. Yes.

2 Q. Okay.

3 What did it say?

4 A. Says 10 wash, 20 wash, 30 wash, 40 wash, 50

5 wash, 100 wash, so --

6 Q. Okay.

7 So for a given hip protector garment, it was inside

8 a plastic bag; is that correct?

9 A. That's correct.

10 Q. Okay.

11 So there was one bag and one garment; correct?

12 A. No, there were two.

13 Q. Two what?

14 A. There were two of them. One was -- again, one

15 heavy-duty, one light-duty. Remember?

16 Q. Right. I got that.

17 A. So there were two of them.

18 Q. Okay.

19 So there were two in the bag -- in a bag?

20 A. Yes.

21 Q. Are they still in the bags here today?

22 A. I'm -- I hope so.

23 Q. Okay. We're going to have to look at them, but

24 we'll maybe come back to that in a few minutes.

25 When you signed your name to the garment --

0079

1 A. Uh-huh

2 Q. -- you were signing not on your personal

3 observation; is that correct?

4 A. I was -- When I signed, I already -- already

5 observed when they came back from the laundry.

6 Q. Right.

7 A. I was asked basically to put my signature on

8 there, on each one of them.

9 Q. Right. But your signature does -- is not a

10 representation of personal knowledge that a particular

11 garment was washed in a particular temperature, dried at

12 a particular temperature or washed a certain number of

13 times, is it?

14 A. To my knowledge they were washed.

15 Q. That's all you know.

16 A. That's all I know.

17 Q. Okay. Fine.

18 Is it -- Do -- Do you know what the practice of

19 healthcare institutions is with respect to laundering

20 hip protectors? Let me -- Let me just ask you to hold

21 that for a second and see if I can be a bit more

22 specific.

23 For example, do you know if hip protectors are

24 washed all by themselves by healthcare institutions or

25 washed in 100- or 300- or 400-pound loads with whatever

0080

1 else is being laundered?

2 A. I have no idea.

3 Q. Okay.

4 Now, in your reports you talk about hip protectors

5 which you identify as ST hip protectors and hip

6 protectors that you identify as HD hip protectors.

7 Do you remember that?

8 A. Yes, that's the one I'm calling light and

9 heavy.

10 Q. Okay.

11 When you say "light and heavy," what do you mean?

12 A. I was told there -- one was light stitch, I

13 guess, and heavy stitch.

14 Q. Okay.

15 A. I mean I don't know.

16 Q. Okay.

17 A. That's what I was explained so --

18 Q. Okay.

19 Do you know how to identify from the garments you

20 brought here today what is a light stitch and what is a

21 heavy stitch, or what is an ST or what is an HD?

22 A. As I recall, there's a tag on the -- on the hip

23 protector that has an ID number that tells you what they

24 are.

25 Q. Okay. Fair enough.

0081

1 So that's what -- that's -- that's the way you

2 identified them?

3 A. Uh-huh.

4 Q. Okay. Fine.

5 A. I was also told that there was a single --

6 maybe single stitch, like you just brought up, single

7 stitch or double stitch.

8 Q. Okay. That's fine.

9 A. So --

10 Q. Okay.

11 So there's a -- there's a physical characteristic,

12 in other words?

13 A. Possibly.

14 Q. Okay. Fine. All right.

15 Now, let's just keep our attention to the standard

16 Posey hip protector garment. Was that washed at high

17 temperature or low temperature?

18 A. They both.

19 Q. I'm sorry?

20 A. Washed both temperatures.

21 Q. You washed -- you washed both the standard

22 Posey hip protectors at 120 degrees and at 160 degrees?

23 A. That's what I recall, yes.

24 Q. Okay.

25 And the drying temperature was 145 to 150; correct?

0082

1 A. Yes.

2 Q. And what kind of bleach was used for washing
3 these garments?

4 A. Chlorine bleach.

5 Q. Okay.

6 And when you say "chlorine bleach," is that
7 something as simple as Clorox or is it something more
8 sophisticated?

9 A. No, same as sodium hyperchloride.

10 Q. Okay. Okay.

11 Will there be -- In the wash formula information
12 that you're going to get for me, will there be a record
13 showing what the bleach concentration or volume was?

14 A. All the bleach that was -- supplies 12-1/2
15 percent, standard for all launderings.

16 Q. 12-1/2 --

17 A. Percent.

18 Q. -- percent. What's that a percent of? Is that
19 a dilution percentage?

20 A. No, it's a chlorine -- concentration chlorine
21 by volume.

22 Q. And -- And what's the other component, what's
23 the other?

24 A. Water.

25 Q. Okay.

0083

1 So it's -- so it's 12 percent --

2 A. Active chlorine concentration.

3 Q. In the -- in the --

4 A. In the product.

5 Q. That's what's injected, but then it gets
6 diluted when it goes into the machine; correct?

7 A. Yes.

8 Q. Do you have a dilution standard also?

9 A. You -- It's not a dilution standard. It's --
10 It's, let's say, if it's 100-pound load, you put six
11 ounce of product to so many gallons of water based on
12 water level.

13 Q. So you put so many ounces of the diluted
14 concentrate into a machine based on the volume of water
15 that's in the machine?

16 A. Volume of water and volume of load.

17 Q. So if it's a small load, you put less or more
18 or what?

19 A. If it's a small load, you put less and you put
20 less water.

21 Q. All right.

22 Now, will your information tell me how much -- what
23 the water volume was, as well as what the load was, as
24 well as what the dilution was?

25 A. The formula will give you the water level.

0084

1 Q. In -- in gallons, something like that?

2 A. Not gallons, inches.

3 Q. Inches?

4 A. How many inches, it's in the drum.

5 Q. Okay.

6 Is there a way we can use that to determine the
7 dilution level though?

8 A. Yeah. The inches from the manufacturer, you
9 know how many gallons per inch.

10 Q. All right. Fine. Fair enough.

11 That's what I'm looking for.

12 A. So each inch equals, let's say, so many
13 gallons. At a six-inch level it would be equal, let's
14 say, 20 gallons of water.

15 Q. Okay.

16 A. If -- if the load is bigger, you know, there's
17 a formula. That's what laundry guideline will tell you.
18 If you look at the laundry textbook, it will tell you
19 different manufacturer, different washers, what the
20 levels are for each formula -- for each washer.

21 Q. Okay.

22 And the information you're going to be able to give
23 me is going to tell me what that is; is that correct?

24 A. Yes.

25 Q. Okay.

0085

1 And that would have varied by the number of hip
2 protectors that were being washed or just the wash
3 level -- I mean or just the -- the capacity of the
4 machine?

5 A. The capacity that you use in this case was
6 100-pound washer.

7 Q. Right.

8 A. And they put the hip protectors so I -- and
9 then he basically look at the water levels and
10 mechanical action. Whenever you set up the water level,
11 you have to look at the mechanical action of the wash
12 cycle.

13 Q. So, in -- in other words, you're saying that
14 your technician somehow adjusted the amount of water
15 that came into that 100-pound machine because these
16 loads were much smaller; is that correct?

17 A. Yes. It -- It's a programmable level --

18 Q. Okay.

19 A. -- on the micro- -- again on the
20 microprocessor. You can program the one-inch level,
21 two-inch level, three-inch level, four-inch level.

22 Q. Okay.

23 And the information you're going to get me is going
24 to be able to show what Mr. Gastelum programmed?

25 A. Yes.

0086

1 Q. Okay.

2 And from that I'll be able to determine what the
3 dilution was of the chlorine breach -- Excuse me, bleach
4 for each load; is that correct?

5 A. Yes.

6 Q. Okay.

7 A. He also have a -- strips that measures ppm,
8 chlorine ppm.

9 Q. Did he maintain those?

10 A. Yeah. He has a titration saying how many ppm
11 chlorine.

12 Q. And you think he maintained those?

13 A. It's a standard procedure for us to do, every
14 laundry he does.

15 Q. Right.

16 A. So --

17 Q. Standard procedure, but is it also standard
18 procedure for him to have retained those titration --
19 titra- -- titration slips?

20 A. I don't know if he's got the paperwork, but, I
21 mean -- But I can ask him.

22 Q. Okay.

23 I'd like you to ask him.

24 A. Okay.

25 Q. Bear with me for a second. I just want to make

0087

1 a note.

2 A. Sure.

3 Q. And I -- I have a question and I'm not sure

4 you -- I'm not sure I understand your answer, so let me

5 go back to the question and see if I can --

6 For all of the standard Posey hip protectors that

7 were washed in your test, what was the temperature or

8 temperatures used to wash them?

9 A. As I said earlier, 160 for 25 minutes for one

10 batch and 120 for the other batch.

11 Q. Okay.

12 So for what batch was -- was washed at 120?

13 A. They were -- They were, again, single-stitch,

14 as you mentioned, plus the heavy-duty. They were

15 identical loads, one 120-wash, one 160-wash.

16 Q. Okay.

17 And did you also wash some of the HD hip protectors

18 at both 120 degrees and 160 degrees?

19 A. Yes.

20 Q. Okay.

21 Did you use a different bleach dilution when you

22 washed at 120 degrees relative to when you washed at 160

23 degrees?

24 A. Used the same amount.

25 Q. Okay.

0088

1 Sorry. My typing leaves something to be desired

2 today. That's what happens on Fridays.

3 Now, you testified earlier that you weren't present

4 at any of the washer and dryer testings; is that

5 correct?

6 A. Yes.

7 Q. Okay.

8 And is it your understanding that Mr. Gastelum --

9 Would you pronounce his name for me?

10 A. Gastelum.

11 Q. Gastelum. That he was present for all of the

12 washings?

13 A. I'm sure he was because he got paid for it.

14 Q. Okay. That's a good incentive.

15 What -- Tell me about him. What does he do for

16 your company or with your company?

17 A. He's our field technical manager. He's been

18 with us for almost 28 years. He worked in the

19 laundry -- in the healthcare laundry since he was 18

20 years old. He knows healthcare laundry and then he

21 joined us after he left the company.

22 Q. Okay.

23 A. He -- He sets up wash formulas, titrates the

24 load, make sure quality control is there. He starts up

25 new accounts for us.

0089

1 Q. When you say he "starts up new accounts," he
2 sets up the machines?

3 A. When you -- When you sign a new contract with a
4 new laundry facility --

5 Q. Yes.

6 A. -- he goes in and programs all the washers,
7 sets up the formulas, titrations, injection quantities,
8 water levels, temperatures in the washer controllers.

9 Q. Does your company do dry-cleaning as well as --

10 A. We do not do dry-cleaning.

11 Q. Okay.

12 Did you conduct any contamination or
13 decontamination tests associated with laundering of
14 these Posey hip protectors?

15 A. What do you mean by decontam- --

16 Q. In other words, did you -- Were -- Were these
17 brand-new products when you tested them?

18 A. Yes, they were brand-new given to us.

19 Q. And you didn't -- There were no -- There were
20 no -- No contamination was entered into the test; is
21 that correct? In other words, they weren't soiled, they
22 weren't subject to some infections or anything like --
23 infectious materials or anything like that?

24 A. No, they were not.

25 Q. Okay.

0090

1 So you weren't able to determine the extent to
2 which your washing and drying protocol could or would
3 remove infectious materials from the products; is that
4 correct?

5 A. No, I couldn't tell you because they were not
6 contaminated.

7 Q. Okay.

8 Did you or did your technician conduct any tests to
9 determine the extent to which the pads in the Posey hip
10 protectors were subject to moisture or cracking after
11 the washing?

12 A. He has no clue. He just does washing.

13 Q. Okay. Fine.

14 A. He was instructed basically to do wash and dry
15 and return.

16 Q. Okay.

17 I'm going to ask that this document be marked
18 as the next exhibit in order, which I believe is
19 156, and this is a document that is captioned on
20 the top "Warning" and it has the Bates number
21 HS2 002209. [EXH-156]

22 (Whereupon the document referred to is marked by
23 the reporter as Plaintiff Exhibit 156 for
24 identification.)

25 MR. DAILEY:

0091

1 Q. Have you seen that document before?

2 A. I don't recall, no.

3 Q. Did -- When you received the Posey hip
4 protectors from -- Did you receive them from Posey or
5 from Mr. Morseburg?

6 A. They were dropped off to us.

7 Q. By whom? Someone at Posey?

8 A. No.

9 Q. No. Someone at Sheldon?

10 A. I don't know who dropped off, but somebody
11 brought to our office.

12 Q. Okay. Fine. Fair enough.

13 A. I can't tell you.

14 Q. Did you -- Did you inspect the -- the garments
15 and the packaging at that point in time?

16 A. I think Doug came over and opened up and told
17 me what -- what they were because first time I've seen
18 them.

19 Q. Okay.

20 A. So -- and he basically -- I was told that there
21 was heavy-duty and light-duty and so we divided what --
22 what they asked us to do as far as washing, you know, 40
23 pieces of each and 100 washes and whatever instruction
24 they give us and that's what we did.

25 Q. Okay.

0092

1 Did you see this warning label on any of the
2 garments?

3 A. I don't recall.

4 Q. Okay.

5 I'm going to ask you to look at the second
6 paragraph that begins "Posey hipsters contain foam" --
7 Do you see that?

8 A. Yes.

9 Q. And it says, "Posey hipsters contain foam pads
10 that are sealed in a pouch to protect the foam."

11 Did I read that correctly?

12 A. Yes.

13 Q. Do you know where those pads are in the
14 garments that you tested?

15 A. I guess they're sealed. They're sewed inside
16 the fabric.

17 Q. And you don't -- You don't know what the
18 material is --

19 A. No, I don't.

20 Q. -- of what the foam is; is that correct?

21 A. No.

22 Q. And you don't know what the sealing material is
23 either, do you?

24 A. No.

25 Q. It then goes on to say "If the pouch is cut or

0093

1 the seal is broken in laundering, moisture will enter
2 the pouch and compromise the impact absorption quality
3 of the foam."

4 Did I read that correctly?

5 A. Yes.

6 Q. It then says, "Test pouch and foam integrity by
7 squeezing the pad in one fist, forcing the air to one
8 end, resulting in an air bubble."

9 Do you see that?

10 A. Yes.

11 Q. Did I read that correctly? Did I read that
12 correctly?

13 A. Yes.

14 Q. And then it goes on to say, "If you hear or
15 feel air or liquid escaping, or the foam feels soft and
16 spongy, the pouch is damaged."

17 Do you see that?

18 A. Yes.

19 Q. And then it says, "If the pouch is damaged
20 discontinue use immediately."

21 Did I read all of that correctly?

22 A. Yes.

23 Q. Did you or Mr. Gastelum conduct any of these
24 squeeze testing between washings?

25 A. Not to my knowledge.

0094

1 MR. DAILEY: Okay.

2 We can take a break now. You want to take a break

3 for five minutes?

4 THE VIDEOGRAPHER: We're going off the record. The

5 time is 11:05. This is end of Tape 1, Volume I of the

6 deposition of Kevin Minissian.

7 (A recess is taken.)

8 THE VIDEOGRAPHER: We are on the record. The time

9 is 11:23. This is beginning of Tape 2, Volume I of the

10 deposition of Kevin Minissian.

11 MR. DAILEY:

12 Q. I'm going to ask the stenographer to mark as

13 the next exhibit in order, which will be 157, a document

14 that is entitled at the top --

15 A. Before we go forward, can I make a comment? I

16 need to correct something.

17 Q. You know, I knew you were going to do that. I

18 gave you two chances already. Hang on for just a

19 second. Let me get this document in, and then I'll be

20 happy to let you do that.

21 This document that will be marked as Exhibit

22 Number 157, is marked "Guidelines for Laundry in Health

23 Care Facilities" and it has on the first page a Bates

24 number PC 0375. [EXH-157]

25 Let's get that marked and then you can make your

0095

1 statement.

2 (Whereupon the document referred to is marked by

3 the reporter as Plaintiff Exhibit 157 for

4 identification.)

5 MR. DAILEY: Whoa, whoa, whoa, whoa, whoa. Well --

6 THE WITNESS: Sorry.

7 MR. DAILEY: Things happen. You shouldn't be

8 laughing. You've done that.

9 MR. MORSEBURG: I have. It's nice to know someone

10 else has done it, and I'm not alone.

11 THE VIDEOGRAPHER: You want to go off the record?

12 MR. DAILEY: Yeah.

13 THE VIDEOGRAPHER: We're going off the record. The

14 time is 11:24.

15 (A recess is taken.)

16 THE VIDEOGRAPHER: We are on the record. The time

17 is 11:26.

18 MR. DAILEY:

19 Q. Okay.

20 Mr. Minissian, you wanted to correct a statement or

21 amend a statement; is that correct?

22 A. Yeah. I just contacted Mr. Jaime Gastelum.

23 The way the procedure went, we were given the Posey

24 material to wash. It was washed 10 times when -- first

25 time they were given, and then they were -- We stopped.

0096

1 I did -- I did a report based on the samples that I
2 received from a 10-wash. And then they were -- they
3 came back and we were asked to do 100 times wash and
4 they were washed 100 times, sometimes in April and May.

5 Q. Okay.

6 A. And the samples that were given, they were
7 heavy-duty, and the -- and the light-duty -- the
8 heavy-duty was washed 160 and the light-duty was washed
9 on 120, so they were not mixed together.

10 Q. That's the information you received from?

11 A. Jaime Gastelum.

12 Q. So when you signed your name to all of these
13 garments, did you know what you were signing before you
14 just asked Mr. Gastelum what had been done to the
15 products?

16 A. The boxes were separated 10 by 10 by 10. And
17 they were identified as high-temperature wash and
18 low-temperature wash.

19 Q. Right.

20 But prior to -- My question is prior to speaking to
21 Mr. Gastelum about 10 minutes ago, did you think that
22 the process that had been used by him was as you
23 testified earlier this morning?

24 A. Say that again?

25 Q. Earlier this morning you testified twice that

0097

1 all of the pads were -- were washed at both 120 and 160

2 degrees; correct?

3 A. That's correct.

4 Q. You then this morning -- You then a few moments

5 ago called Mr. Gastelum during the break; correct?

6 A. That's correct.

7 Q. And Mr. Gastelum informed you no, the pads had

8 been washed, some at 120 and some at 160; correct?

9 A. Yes.

10 Q. Did you know that when you signed each one of

11 those pads that you brought with you today?

12 A. I only signed -- I signed the pads based on

13 what they said on them.

14 Q. You signed -- So you didn't know whether what

15 they said had been done or not; is that correct?

16 A. That's not what I said. I said I signed what

17 they were indicated on the pad as far as what they were

18 washed at.

19 Q. Right.

20 And you had no personal knowledge of what they were

21 washed at; is that correct?

22 A. As far as temperatures?

23 Q. As far as temperature, as far as chemical, as

24 far as time, as far as drying, as far as washing, as far

25 as what was washed at 160 and what was washed at 120.

0098

1 You have no personal knowledge whatsoever, do you?

2 A. He was told to wash according to the CDC

3 Guidelines based upon the temperatures, but I don't -- I

4 didn't remember whether they were washed together or

5 separately. I guess they were heavy-duty and the

6 light-duty items, but they were washed separately so I

7 cannot --

8 Q. And -- And when you signed them, you didn't

9 know that, did you? You didn't know what you were

10 signing, did you?

11 A. I signed what they said on there.

12 Q. Okay.

13 But you thought they said something different than

14 what you testified to just this few minutes ago because

15 you testified two different ways this morning, haven't

16 you? In fact, I asked you the question twice, didn't I?

17 A. I know you did but --

18 Q. Okay.

19 And you answered differently than what you've

20 answered now after consulting outside the room with your

21 lawyer --

22 A. Well, 10 months ago --

23 Q. -- and your -- and Mr. Gastelum; correct?

24 A. Well, this was done 10 months ago, and I've got

25 other things to do than just remember every facts that

0099

1 you're asking me.

2 Q. Okay.

3 But -- But you're being asked to testify to the

4 facts as an expert witness, aren't you?

5 A. I'm asked to -- We were asked to wash these

6 items, which we did.

7 Q. Okay.

8 A. What the outcome is, is what you got in the

9 boxes. That's all I can tell you.

10 Q. Okay. Fine. We'll leave it at that.

11 A. Okay.

12 Q. Let me ask you to look at Exhibit 157. Do you

13 recognize that document?

14 A. This looks like the CDC Guidelines of the --

15 Q. When you say it "looks like," do you know for a

16 fact that it is?

17 A. I can't tell you, but they're very similar to

18 the CDC Guidelines.

19 Q. Okay.

20 When you -- when you referenced or used the CDC

21 Guidelines, where did you get them, Mr. Minissian?

22 A. I got a copy of the CDC -- I mean, you can get

23 on the website and see it.

24 Q. Is that how you got them?

25 A. No, I had a copy from -- from Doug.

0100

1 Q. Mr. Morseburg gave you --

2 A. Yes.

3 Q. Did he give you this copy, which has a -- the

4 Bates number PC 0375?

5 A. I don't remember the number but --

6 Q. Okay. Okay. Well, let's move on.

7 On the first page of this document, can you point

8 to me where the CDC Guideline is for the higher

9 temperature laundering and drying?

10 A. It's under one, two -- under "Control

11 Measures."

12 Q. Yes.

13 A. Paragraph three.

14 Q. The -- The paragraph that begins the

15 "microbial" action of normal laundering process --

16 A. Yes.

17 Q. -- that paragraph?

18 Okay. That's the -- That's the guideline you used

19 for your high temperature laundering; is that correct?

20 A. Yes.

21 Q. And it says -- If you count down in that

22 paragraph, I'm going to count lines, one, two, three,

23 four -- four lines down, the -- the word on the left is

24 "have"? Do you see that, "have some micro-" --

25 "microbicidal" products -- "properties."

0101

1 Do you see that?

2 A. Yes.

3 Q. And the next sentence says, hot water provides
4 an effective means of destroying microorganism, and a
5 temperature of at least 71 degrees centigrade, paren,
6 (160 Fahrenheit) for a minimum of 25 minutes is commonly
7 recommended for hot water washing.

8 Did I read that correctly?

9 A. Yes.

10 Q. Now, did the formula you gave to Mr. Gastelum
11 include for -- for the high temperature laundry, was
12 that at 71 degrees centigrade or 160 degrees Fahrenheit
13 for a minimum of 25 minutes?

14 A. Yes.

15 Q. Okay.

16 And when you produce that formula to me, it will
17 show that; is that correct?

18 A. Yes.

19 Q. And it will show that on the log; is that
20 correct?

21 A. On the log?

22 Q. Microprocessor log?

23 A. On the log sheet that he did it only shows the
24 times.

25 Q. Where -- Where can we determine the temperature

0102

1 since you don't have --

2 A. It will be on -- It will be on the wash guide.

3 Q. It will be on a --

4 A. On a wash formula guide.

5 Q. Okay.

6 But how -- Where do we have information that it

7 actually was washed at that?

8 A. It's in the microprocessor.

9 Q. So the microprocessor will show that on such

10 and such a date in January or February of this year, you

11 washed for 25 minutes at 71 degrees centigrade; is that

12 correct?

13 A. There's no date in the microprocessor, only

14 formula.

15 Q. Okay.

16 But does it show 71 degrees centigrade at least?

17 A. Yes.

18 Q. Okay.

19 And you say you believe that Mr. Gastelum could

20 actually do a laser test to confirm that temperature; is

21 that correct?

22 A. That's correct.

23 Q. Okay.

24 MR. MORSEBURG: Object. That misstates his prior

25 testimony. You mean washing temperature or drying

0103

1 temperature?

2 MR. DAILEY: Both. But I asked him about washing.

3 MR. MORSEBURG: Okay.

4 THE WITNESS: What I said is he has a physical

5 temperature probe with a laser gun --

6 MR. DAILEY:

7 Q. Right.

8 A. -- that he has ability to measure the

9 temperatures to verify that's what it is.

10 Q. Right.

11 And you're going to ask him if he has a log showing

12 that, in fact, he verified the temperature.

13 A. I'm going to ask him if he used the gun.

14 Q. That's fine.

15 A. So --

16 Q. That's fine.

17 But the formula that you wrote down and told him to

18 program says 71 degrees centigrade for 25 minutes; is

19 that correct?

20 A. I told him 160 Fahrenheit.

21 Q. That's fine. That's fine. Okay. Fair

22 enough. For 25 minutes. Okay.

23 A. Yes.

24 Q. And then this higher-temperature laundry

25 standard goes on to state, "Chlorine bleach provides an

0104

1 extra margin of safety. A total of available chlorine
2 residual of 50-150 parts per million is usually achieved
3 during the bleach cycle."

4 Did I read that correctly?

5 A. Yes.

6 Q. Is that the level of bleach that you specified?

7 A. We specify between 50 and 175.

8 Q. 50 and 175 parts per million --

9 A. Yeah.

10 Q. -- and that's in the document that you gave
11 to --

12 A. That's common what you use.

13 Q. Okay.

14 And that will show in the record in the -- from the
15 microprocessor?

16 A. His test results will indicate what the ppm was
17 on the --

18 Q. Okay.

19 And that will be from the titration; is that
20 correct?

21 A. Yes.

22 Q. Okay.

23 It then goes on to state, "The last action
24 performed during the washing process is the addition of
25 a mild acid to neutralize any alkalinity in the water

0105

1 supply, soap, or detergent."

2 Did I read that correctly?

3 A. Yes.

4 Q. Was some type of acid applied in --

5 A. It's laundry soap with the softeners.

6 Q. So the answer is "yes"?

7 A. Yes.

8 Q. Okay.

9 So you used this process for all of the Posey hip

10 protectors that were washed at 160 degrees; is that

11 correct?

12 A. Yes.

13 Q. Okay.

14 And you believe, although you don't know, that

15 Mr. Gastelum carried out the 100 washings in that

16 fashion; is that correct?

17 A. He was initially paid to do this for us, so I

18 assume he did.

19 Q. Okay.

20 If you look at the next paragraph of Exhibit 157,

21 it says, "Recent studies have shown that a satisfactory

22 reduction of microbi-" -- cro- -- "microbial," excuse

23 me, "contamination can be achieved at lower water

24 temperatures of 22" -- "22-50 degrees centigrade when

25 the cycling of the washer, the wash formula and the

0106

1 amount of chlorine bleach are carefully monitored and
2 controlled."

3 Did I read that correctly?

4 A. Yes.

5 Q. It then references two footnoted documents. Do
6 you see that? It says exhibit footnotes 6 and 7.

7 A. Well, where are you looking at, 6 and 7?

8 Q. All right.

9 Just bear with me. We're in this paragraph that
10 talks about lower water temperatures.

11 Do you see that?

12 A. Yes.

13 Q. And then in the next line down, there are two
14 footnotes talking -- That they say 6 and 7.

15 Do you see them?

16 A. Yes.

17 Q. And then you go over to the next page and you
18 look at footnote 6 and 7. Do you see those?

19 A. Yes.

20 Q. Footnote 6 references a research article by
21 RR Christian, the lead author.

22 Do you see that?

23 A. Yes.

24 Q. And that's one of the documents, in fact, you
25 cited in your report, isn't it?

0107

1 A. Yes.

2 Q. Okay.

3 And the second one, number 7, is a -- is a document

4 authored by MJ Blaser.

5 Do you see that?

6 A. Yes.

7 Q. And you also referenced that in your report; is

8 that correct?

9 A. Yes.

10 Q. Does that mean that you used a formula for the

11 low-temperature laundry that was -- that included a wash

12 formula and chlorine levels that were both carefully

13 monitored and controlled that were in accordance with

14 either Christian or Blaser or both?

15 A. You went with the guidelines of maintaining 50

16 to 175 ppm.

17 Q. Okay.

18 50 to 175 ppm and the guideline is actually 50 to

19 150.

20 A. Uh-huh.

21 Q. That -- that guideline is for high-temperature

22 laundry; is that correct?

23 A. Yes.

24 Q. And, in fact, for the low-temperature

25 monitoring, Christian specifies a different chlorine

0108

1 level; isn't that correct?

2 A. He probably does. I don't remember what the

3 number is.

4 Q. In fact, he specifies a higher chlorine level.

5 A. Then I'm sure he does.

6 Q. You did not -- You did not increase the

7 chlorine level when you used low-temperature laundering,

8 did you?

9 A. We did not because it was not contaminated.

10 Q. Okay.

11 But the answer is you used the same chlorine bleach

12 level for your low-temperature laundry as for your

13 high-temperature laundry; is that correct?

14 A. I said we use the same amount of product in

15 both cases.

16 Q. Right.

17 So same product, same dilution, same parts per

18 million; is that correct?

19 A. That's correct.

20 Q. Okay. Fine.

21 Now, with respect to both low-temperature laundry

22 and high-temperature laundry, did you dry the products

23 at the same dryer temperature and for the same duration?

24 A. Yes.

25 Q. Okay.

0109

1 And that was approximately 150 degrees?

2 A. That's what he was -- I was told, yes.

3 Q. Okay.

4 You read both the Christian and Blaser articles; is
5 that correct?

6 A. It's been a while.

7 Q. Did you read them in preparing your report?

8 A. No.

9 Q. Okay.

10 Did you read them in preparing the formula that you
11 gave to Mr. Gastelum before washing and drying?

12 A. Not based on their report.

13 Q. Okay. Fine.

14 Are you aware that both Christian and Blaser report
15 that higher temperature is to be used for -- is to be
16 used for drying when you're using low-temperature
17 laundering?

18 A. They -- they may.

19 Q. Okay.

20 A. They also universally talk about all kinds of
21 fabric, not just the one. You have cotton fabric, you
22 have polyester fabrics.

23 Q. Well, you had cotton polyester and other
24 urethanes in this product; is that correct?

25 A. That's correct.

0110

1 Q. Okay.

2 A. My -- My experience with the polyester or
3 synthetic material you do not like to expose to high
4 temperatures --

5 Q. Okay.

6 A. -- because of melting issue.

7 Q. Okay. Fine.

8 Would that suggest that if you have to use lower
9 drying temperature, that you have to use a higher
10 laundering temperature to obtain the necessary
11 decami- -- decontamination?

12 A. Not necessarily.

13 Q. Why?

14 A. Because most of the disinfection is done by the
15 chlorine bleach and washing in water.

16 Q. But you didn't increase the chlorine bleach
17 level, did you?

18 A. Doesn't matter.

19 Q. Does that mean you're rejecting Christian and
20 Blaser?

21 A. Their test was done on a very soiled
22 contaminated water soil. We did not do that here.

23 Q. But you tested products that had never been
24 worn, I understand that.

25 A. Right.

0111

1 Q. But how do you think these products are going
2 to be used in the real world?

3 A. Don't know.

4 Q. Would you expect them to be soiled, like any
5 underwear, for example?

6 A. It could.

7 Q. Would that suggest that you should follow
8 Christian and Blaser and increase the bleach levels?

9 A. You can. I don't know what it will do to the
10 polyester fabric.

11 Q. Okay.

12 A. I don't think it will impact anything to the
13 fabric at all.

14 Q. But is it fair to say that the CDC Guideline
15 specifies when it references Christian and Blaser that
16 you should increase the bleach level if you use
17 low-temperature laundering?

18 A. For purpose of disinfecting.

19 Q. Okay. Okay.
20 Do you consider that to be an important purpose for
21 a product that is used in healthcare facilities?

22 A. Again, it's a controversial -- very
23 controversial because the bacterial side effect of
24 chlorine on the -- on the fabric, you can get the same
25 results at 50 ppm. Primarily chlorine bleach is not

0112

1 only used for disinfecting but also used for stain

2 removal.

3 One thing that they -- they did not include in that

4 when you drop the temperature, effectiveness of chlorine

5 bleach decreases as far as remove -- removing stain.

6 Q. So are you telling me that you disagree with

7 Christian and Blaser that bleach -- that chlorine bleach

8 levels should be increased when you use low-temperature

9 laundering?

10 A. They increase for sake of removing stain

11 because the activity of the chlorine drops at 120.

12 Q. Do you remember them saying stain or -- or --

13 or contamination?

14 A. I don't remember what they say, but my 30 years

15 of experience I know for a fact at 120 degrees, stain

16 removal from chlorine bleach is -- is not as effective

17 as higher temperature.

18 Q. So is it your opinion that you -- That when you

19 use low-temperature laundering, that you should not

20 change the bleach level?

21 A. It has to do how effectively the chlorine can

22 remove the stain.

23 Q. Okay.

24 What about contamination?

25 A. I think 150 ppm with chlorine is plenty enough

0113

1 to disinfect if that's what it is.

2 Q. Okay.

3 And is it your position then that you should

4 deviate from the CDC standard which references a higher

5 bleach level when you use lower temperature laundering?

6 MR. MORSEBURG: Object --

7 THE WITNESS: I'm not --

8 MR. MORSEBURG: -- there's no foundation for any of

9 this.

10 THE WITNESS: I'm not deviating anything. I'm

11 saying from my opinion throughout the 30 years, because

12 of ironing and drying temperatures and amount of

13 chlorine that's used -- Again, it's a -- it's a

14 temperature versus chlorine concentration, and if

15 there's a stain on the fabric, then the wash quality is

16 not adequate.

17 MR. DAILEY:

18 Q. Right, but -- but the CDC Guidelines are not

19 about stain, they're about contamination, aren't they?

20 A. CDC Guidelines for infection control.

21 Q. Right.

22 And what -- What does your experience tell you

23 about chlorine bleach levels to remove contamination?

24 A. Chlorine bleach level you can kill bacteria

25 at -- at low ppms as 10.

0114

1 Q. So why didn't you use 10?

2 A. Because you can't clean at 10 ppm

3 Q. Can you remove contamination at a low water

4 temperature?

5 A. You can -- You can destroy bacteria, yes.

6 Q. How do you know that?

7 A. Well, you can do -- We can do a test to find

8 out.

9 Q. Have you ever done any test?

10 A. We've done some culture tests, yes.

11 Q. Yes. Who has?

12 A. At the hospitals I have -- I have customers

13 that do the preadded culture test.

14 Q. And did you do any culture test here?

15 A. Culture? No, we did not do them. It's not

16 contaminated.

17 Q. It's not contaminated.

18 So is your testimony that you did not use the

19 higher bleach levels set out in the Christian arti- --

20 Christian and Blaser articles?

21 A. We did not because it's not contaminated.

22 Q. Now, you referenced both Christian and Blaser

23 as authorities in your report, didn't you?

24 A. Yes.

25 Q. What are you recogni- -- what are you citing

0115

1 them as authorities for?

2 A. As far as that the fabric can be washed at low
3 temperature effectively.

4 Q. Okay.

5 But at the same -- but not for the bleach levels.

6 Is that it?

7 A. I mean, we can argue about this all day.

8 Q. No, I'm -- I'm asking you what you cited it
9 for.

10 A. I just don't know what impact chlorine is going
11 to do here.

12 Q. So you didn't follow the statements about the
13 chlorine -- increased chlorine bleach levels that are in
14 the Christian and Blaser articles; is that correct?

15 A. Because it was not contaminated, I didn't think
16 it was an impact.

17 Q. Okay.

18 In your experience what is a low-drying
19 temperature?

20 A. Most common drying temperatures are 180 for
21 cotton items, 180 degrees or closer to 200. Low-drying
22 temperatures are 130 to 160.

23 Q. What about hot?

24 A. 180 to 200.

25 Q. What about medium?

0116

1 A. There's no -- It's 160, I would say.

2 Q. I'm sorry --

3 A. 160.

4 Q. -- I -- I -- When I said "hot" I meant high.

5 A. High?

6 Q. Yes.

7 A. I gave you 180 to 200.

8 Q. Okay.

9 And is there -- And you said 180 is the most common
10 drying temperature?

11 A. On cotton items, 180 to 200 is the most common.

12 Q. Okay. Fine.

13 And for high you said it was 180; is that it? Am I
14 correct?

15 A. Yes.

16 Q. Okay.

17 Did you conduct any test to determine the extent to
18 which the Posey hip protectors could be washed and dried
19 according to the instructions that Posey prints on the
20 labels on the -- on the wash tag of -- of each of the
21 garments?

22 A. No.

23 Q. Okay.

24 So do you know whether the products can survive
25 without degradation 10 washings, 50 washings, 100

0117

1 washings, if they're washed according to the

2 instructions on the products?

3 A. I -- I think their -- the -- the single-stitch,

4 as I recall, was designed for low temperature and heavy

5 duty was designed for high.

6 Q. Right.

7 A. So --

8 Q. But you washed the low temperature products at

9 a different bleach level than is set out in the CDC

10 Guideline, didn't you?

11 A. We put whatever ppm it was in there. I'm not

12 too sure. I have to look at the data, what ppm was

13 washed at. I don't have the exact titration numbers for

14 me to tell you.

15 Q. Did you -- When you washed the -- some of the

16 garments at the higher temperature, did you also dry

17 them on medium or high?

18 A. No. All the drying were the same.

19 Q. Okay.

20 Were you asked -- and I apologize if I asked you

21 this question -- were you asked to conduct any test at

22 any level of washing and drying the products in

23 accordance with the labels that are printed on them by

24 the manufacturer?

25 A. We dried based on the time it took to dry

0118

1 effectively.

2 Q. So you didn't follow the instruction on the

3 labels. Is that what your answer is?

4 A. No, I -- I told them to dry based from my

5 experience what the fabric, you know, the material was

6 that polyester blend.

7 Q. Okay. I got that.

8 But did you consult the labels and wash and dry in

9 accordance with them?

10 A. I don't remember.

11 Q. Okay. Fair enough.

12 I'm going to ask you to look again at Exhibit 154,

13 if you wouldn't mind.

14 A. Okay. Fine.

15 Q. That should be the first document I gave you

16 this morning, and, in particular, I'd like you to look

17 at -- Bear with me. I have to find what I'm trying to

18 cite here.

19 If you look at your opinions beginning on page

20 HS2 002212. Do you see that --

21 A. Uh-huh.

22 Q. -- it says "My Opinions"?

23 A. Yes.

24 Q. And then -- And then under the numeral 1, you

25 cite a statement from the web site of the HipSaver

0119

1 company. Do you see that?

2 A. Uh-huh.

3 Q. And then you state, in my opinion, this

4 statement is false. Based on my experience, wash

5 temperature range of institutional laundries is

6 currently between 100 degrees Fahrenheit and 160 degrees

7 Fahrenheit; is that correct?

8 A. Yes.

9 Q. And the first thing -- And then you say,

10 therefore the average temperature is around 130 degrees

11 Fahrenheit and drying temperature for geriatric pads

12 which is similar to hip protector is around 140 to 150

13 degrees Fahrenheit.

14 Did I read that correctly?

15 A. Yes.

16 Q. Now, how did you determine that there is some

17 kind of average wash temperature of 130 degrees?

18 A. That's what I -- That's what currently I see at

19 the healthcare facilities.

20 Q. Okay.

21 And what healthcare facilities are those?

22 A. Angelica, Clothold --

23 THE REPORTER: I'm sorry, "Angelica"?

24 THE WITNESS: Clothold, Sedexco, which these are

25 major health -- healthcare facilities in the country.

0120

1 MR. DAILEY:

2 Q. They are major healthcare facilities? Where

3 are they located?

4 A. All over the country.

5 Q. All over the country.

6 And how do you determine that their average wash

7 temperature is 130 degrees Fahrenheit?

8 A. Because we supply the chemicals to set up their

9 formulas.

10 Q. And -- and what information do they give you

11 that says we wash at 130 degrees Fahrenheit?

12 A. You look at the washing machine and look at the

13 formula setup, the wash guide, and you look at the

14 temperature gauges.

15 Q. I asked you what information you receive from

16 these institutions, or did you go out and look at --

17 A. No, we're at the -- We're at the facilities

18 every week.

19 Q. Okay. Fine.

20 When we say "we," who are we talking about?

21 A. Our technician.

22 Q. Okay. Fine.

23 And what kind of -- Is that the same Mr. Gastelum?

24 A. Mr. Gastelum and others we have in the field

25 that service accounts.

0121

1 Q. Okay. Fine.

2 And -- And they report to you that healthcare
3 facilities in their institutional laundries wash at 130
4 degrees Fahrenheit; is that correct?

5 A. That's correct.

6 Q. Okay. Fine.

7 Do you have any personal knowledge of any
8 healthcare facilities that wash at 130 degrees?

9 A. Quite a few.

10 Q. Other than all the VA facilities that --

11 A. Yeah.

12 Q. -- you think wash? Okay.

13 A. I've been -- I've been personally
14 knowledgeable. We had Angelica contract for 10 years.

15 Q. Okay.

16 And when you say the drying temperature for
17 geriatric pads, which is similar to hip protector is
18 around 140 to 150 degrees, what type of geriatric pads?

19 A. These are --

20 Q. Say again?

21 A. These are pads, diapers.

22 Q. I'm sorry?

23 A. Diapers.

24 Q. Diapers.

25 What are they made out of?

0122

1 A. They have a padding inside and they're --
2 they're large.

3 Q. Yes, but what are they made out of?

4 A. Polyester.

5 Q. Polyester.

6 A. Polyester and cotton blend.

7 Q. Okay. Fine.

8 Is it the same material that's used in the hip
9 protector?

10 A. I can't tell you that. There could be
11 similarities but not exactly what.

12 Q. Okay.

13 I'll ask the stenographer to mark as the next
14 exhibit in order, which will be --

15 MR. MORSEBURG: 157?

16 THE REPORTER: 158.

17 MR. DAILEY:

18 Q. -- 158.

19 A document which is -- has the Bates number
20 HS2 002287, and has at the bottom a web address
21 www.hipsaver.com/thelaundry.html. [EXH-158]

22 (Whereupon the document referred to is marked by
23 the reporter as Plaintiff Exhibit 158 for
24 identification.)

25 MR. DAILEY: Sorry, Doug.

0123

1 Q. Ask you to take a moment to review that.

2 A. Okay.

3 Q. Do you recognize this document?

4 A. Vaguely, yeah, I think so. I'm not -- I'm not
5 too sure but --

6 Q. Where did you get the information that certain
7 statements were made by the HipSaver Company on its web
8 site?

9 A. I'm saying what -- what's in the report.

10 Q. Right.

11 A. I never -- I did not refer to the web site. I
12 was given the report to respond.

13 Q. You were given what report?

14 A. This -- this form (indicating) was given to me
15 for me to comment.

16 Q. What form was given to you?

17 A. This report (indicating).

18 Q. That report was given to you?

19 A. Well, I -- I'm commenting on this average
20 temperature.

21 Q. Oh, you were given a statement that said
22 number 1, whether --

23 A. Right.

24 Q. -- the statement, quote, "Average wash/dry
25 temperature" --

0124

1 A. Right.

2 Q. -- is accurate; is that correct?

3 A. Right.

4 Q. So someone gave you just that statement and you

5 were asked to provide an opinion --

6 A. Right.

7 Q. -- is that correct?

8 A. I think I went on the web site one time. I'm

9 not -- I'm not too sure but I think that's correct.

10 Q. Okay.

11 So you say in your opinion that first statement is

12 false because you think institutional wash/dry laundries

13 average 130 degrees; is that correct?

14 A. That's correct.

15 Q. Okay. Okay.

16 And then the next one you say whether the

17 representation, quote, "CDC recommended wash temperature

18 range," closed quote, of between 180 to 250 degrees is

19 accurate; is -- is that correct? You were asked to

20 provide an opinion on that?

21 A. I think the CDC Guideline -- oh, within the CDC

22 Guideline. I don't think the CDC Guideline recommends

23 that high of a temperatures wash/drying.

24 Q. Do you know for a fact that HipSaver has made

25 any such statement that the CDC recommends a wash

0125

1 temperature range of 180 to 250 degrees?

2 A. I have no idea. I'm just responding what it

3 says.

4 Q. Okay.

5 And you would agree with me, wouldn't you, that if

6 anybody said the CDC recommended a wash temperature

7 range of 180 to 250 degrees that that would be

8 absolutely false, wouldn't you?

9 A. Would I agree with you?

10 Q. Yes.

11 A. Well, I'm saying it's false so --

12 Q. So you and I agree; correct?

13 A. If you agree with me, yes.

14 Q. We do.

15 And if you go over to the next page which has your

16 third opinion and it states whether the representation

17 that, quote, "CDC Guidelines minimum recommended wash

18 temperature 160" is accurate.

19 Do you see that?

20 A. Yes.

21 Q. And you say that statement is false, and can

22 you tell me why you think that's a false statement?

23 A. Because it gives two options, not only one.

24 Q. Okay. Fine.

25 But, in fact, if you washed at the -- at the higher

0126

1 temperature, 160 is the minimum; isn't that correct?

2 A. That's one of them.

3 Q. Okay.

4 In fact, you washed at 160, didn't you?

5 A. I was asked to wash.

6 Q. Okay.

7 Well, did you think that was in compliance with the

8 CDC Guideline?

9 A. It is in compliance.

10 Q. Okay. Fine.

11 A. But that's not the only item, if you look at my

12 report.

13 Q. Well, you're -- There's another option, and the

14 other option, I agree, is a lower temperature; correct?

15 A. Right.

16 Q. But I'm asking you if this is an accurate

17 statement, in fact; you said it is --

18 MR. MORSEBURG: Object --

19 MR. DAILEY:

20 Q. -- because you washed --

21 MR. MORSEBURG: -- misstates his testimony.

22 MR. DAILEY:

23 Q. -- you washed at 160 degrees; correct?

24 A. To -- to basically comply what your people want

25 us to do.

0127

1 Q. I'll ask you to look at -- Ask you to look at a
2 document that on the cover page says "Video 2 NCPS" and
3 it has the Bates numbers -- on the first page
4 HS2 02198. [EXH-159]

5 Sorry, Doug, I didn't mean --

6 MR. MORSEBURG: That's okay.

7 THE REPORTER: 159; correct?

8 MR. DAILEY: 159, correct.

9 (Whereupon the document referred to is marked by
10 the reporter as Plaintiff Exhibit 159 for
11 identification.)

12 MR. DAILEY:

13 Q. I'm going to ask you in particular to look at
14 the page with the highlighting on that you have. Now,
15 with respect to the document which has been marked as
16 Exhibit 159, and in particular for Mr. Morse- --
17 Morseburg's assistance, the page that is marked
18 HS2 002205.

19 Have you seen that document before?

20 A. I don't -- I don't remember.

21 Q. Do you -- Do you know what NCPS is?

22 A. NCPS?

23 Q. Yes.

24 A. No, I can't recall.

25 Q. So you don't recognize that as a federal study

0128

1 agency that does healthcare research?

2 A. No.

3 Q. Okay.

4 I'd like to -- Are you aware that NCPS has

5 conducted various studies concerning the laundering of

6 hip protectors?

7 A. I'm familiar with JCAH.

8 Q. Oh, the joint commission --

9 A. Right.

10 Q. -- but I'm talking about this federal agency.

11 You're not familiar with this one?

12 A. No, I'm not familiar.

13 Q. And you're not familiar with the work that they

14 have done investigating laundering of hip protectors; is

15 that correct?

16 A. You don't get involved with the textile.

17 Q. I'm sorry?

18 A. We do not get involved in evaluating textile

19 fabric, as far as their evaluations are concerned.

20 Q. Okay.

21 So you -- you've had no association with this

22 federal agency at all --

23 A. No, I do not.

24 Q. -- and you're not aware with their work?

25 A. I'm not associated with them, no.

0129

1 Q. Okay. Fine.

2 I'd like you to look at the -- at the statement at
3 the bottom of page HS2 002205. Do you see where it says
4 "Posey Laundry Notes"?

5 A. Uh-huh.

6 Q. And it says, "As a general rule, Posey hip
7 protectors should not be washed in the hospital laundry.
8 They degrade more quickly and pads crack or dissolve.
9 Bleach appears to accelerate this degrading process."

10 Did I read that correctly?

11 A. Yeah.

12 Q. And it then goes on to say, "However, if
13 necessary, small amounts of bleach should be used. Hip
14 protectors should be dried in low heat and removed
15 promptly from the dryer," period.

16 Did I read that correctly?

17 A. Uh-huh.

18 Q. Okay.
19 Are you aware of this finding that, in fact, when
20 you use bleach, regardless of the temperature, that the
21 Posey hip protectors degrade because of the bleach?

22 A. I'm not --

23 MR. MORSEBURG: Objection to the
24 mischaracterization --

25 THE WITNESS: I'm not aware of that and I didn't

0130

1 see it.

2 MR. DAILEY:

3 Q. Okay.

4 Did you do anything to investigate any degradation
5 in the pads that were washed 100 times?

6 A. No, we did not do.

7 Q. Okay.

8 So in other words, you didn't --

9 A. We weren't asked to do that.

10 Q. Okay.

11 And you did not do that?

12 A. No.

13 Q. So you have no opinion on that?

14 A. No.

15 Q. Okay. Fine.

16 I'm going to ask you to refer to two other
17 exhibits. The next one, which will be marked 160, is a
18 document which on the first page has a Bates number
19 PC 1951. And it's titled at the top "Bacterial Quality
20 of Fabrics Washed at Lower-Than-Standard Temperatures in
21 a Hospital Laundry Facility" and the lead author is
22 Robert R. Christian. [EXH-160]
23 (Whereupon the document referred to is marked by
24 the reporter as Plaintiff Exhibit 160 for
25 identification.)

0131

1 MR. DAILEY:

2 Q. And I'm going to ask you if you recognize this
3 document?

4 A. I have a lot of documents regarding this so I
5 don't remember.

6 Q. Okay.

7 Did you consult this document in making the
8 determination that the low-temperature formula that you
9 specified for washing the Posey hip protectors complied
10 with the CDC Guidelines?

11 A. I did not use this report, no.

12 Q. Okay.

13 And I'm going to ask you to look at one final
14 document, which will be Exhibit 161. And that bears a
15 PC number on the first page -- I'm sorry, Bates number
16 on the first page PC 1933. And that will be Exhibit
17 161, I think. [EXH-161]

18 (Whereupon the document referred to is marked by
19 the reporter as Plaintiff Exhibit 161 for
20 identification.)

21 MR. DAILEY:

22 Q. And just for the record this document is titled
23 "Killing of Fabric-Associated Bacteria in Hospital
24 Laundry by Low-Temperature Washing," and the lead author
25 is Martin J. Blaser.

0132

1 Do you recognize this?

2 A. This is a copy I was talking about, Veterans
3 Administration, Colorado State, Denver, Colorado. You
4 said you didn't have a copy.

5 Q. No, no. Mr. -- Mr. Minissian, please. I asked
6 you to identify it.

7 A. Yeah. Yeah.

8 MR. MORSEBURG: I think he just did.

9 MR. DAILEY:

10 Q. Is this the document -- Is this the document
11 that says, "all VA Hospitals wash at 120 degrees"? Is
12 that the document you're relying on?

13 A. This is the -- Based on this document they
14 dropped their temperatures.

15 Q. And -- And it says that in this document. Is
16 that your testimony?

17 A. This is one of the document that --

18 Q. Okay.

19 A. It was a determining factor for them to drop
20 the temperature.

21 Q. Okay.

22 Do you know for a fact -- Do you know what hospital
23 conducted this experiment?

24 A. Hospital conducted?

25 Q. Yes.

0133

1 A. Well, VA hospital laundries are located in the
2 hospital.

3 Q. Let me ask you this. Let's step back, and
4 we'll go through the whole thing.

5 Did you consult this article when you prepared the
6 formula for washing and drying the Posey hip protectors?

7 A. This articles -- I provided this articles.
8 They were in my file. I read this article 10 times.

9 Q. Did you use this article in preparing the
10 formula? That's my question.

11 A. I used my -- this article as my knowledge to
12 write formulas, yes.

13 Q. Okay.

14 Did you consult this article in preparing the
15 formula that you sent to Mr. Gastelum for washing and
16 drying the Posey hip protectors?

17 A. I use the guideline for CDC for low
18 temperature, and I give him the recommendation usage
19 that he needs to supply the chemicals to the -- to the
20 wash formulas.

21 Q. And did you use this as part of the CDC
22 Guideline?

23 A. I don't understand why your -- What -- What
24 you're getting at.

25 Q. I'm asking you if you read it before you --

0134

1 A. I read it.

2 Q. -- prepared the formula?

3 A. I always read it.

4 Q. When? When?

5 A. I read it.

6 Q. When?

7 A. I read this 10 years ago.

8 Q. Did you -- Have you read it any more recently?

9 A. I read briefly. I didn't go through the
10 details.

11 Q. Okay.

12 That's all you need to tell me.

13 A. Okay.

14 Q. Okay.

15 Why do you think that article is relevant to
16 your -- to the formula that you prepared and
17 Mr. Gastelum apparently undertook to wash and dry the
18 Hosey -- Posey hip protectors?

19 A. Why is it important?

20 Q. Yes.

21 A. I don't know why it is important. I mean,
22 who -- I'm not -- We're doing what you people asked us
23 to do to see what impact it will have, the low
24 temperature and the chemistry on the high-temperature
25 item and low-temperature item.

0135

1 Q. Okay.

2 A. So we were instructed to wash 100 time and

3 return item back to you for you to inspect.

4 Q. Okay. That's fine. That's fine. I

5 understand.

6 Let me ask you this: Is it your understanding that

7 this article by -- authored primarily or the lead

8 article -- author is Mr. Blaser, does this article

9 include a statement that VA Hospitals have adopted a

10 120-degree wash standard -- wash temperature standard?

11 A. Based on this article they adopted the 120

12 degrees wash temperature.

13 Q. You -- You say based on this article, but does

14 the article say that?

15 A. I don't know if the article says that --

16 Q. Okay.

17 A. -- but I know for a fact --

18 Q. Okay.

19 A. -- my relationship with the VA in the past --

20 Q. Yeah, and you're going to get me that

21 information; correct? That says the VA has adopted 120

22 degrees standard?

23 A. There's a gentleman by the name of Kent Tyler.

24 I would recommend you contact him, who -- who instigated

25 the 120-degree wash at the VA Hospitals.

0136

1 Q. Okay.

2 And where is Mr. Tyler?

3 A. Mr. Tyler is in -- either in Chicago or
4 in Washington D.C. I can get his phone number, e-mail
5 it.

6 Q. You can -- It will be most helpful if you would
7 get that and give it to Mr. Morseburg.

8 A. He was instrumental doing the 120-degree wash
9 at the VA Hospitals.

10 Q. Okay.

11 And is it your understanding that the hospital in
12 Denver where Mr. Blaser's experiment was conducted has
13 adopted a 120-degree wash temperature standard?

14 A. It was countrywide.

15 Q. Okay.

16 And it's your understanding that that continues; is
17 that correct?

18 A. My understanding, yes.

19 Q. Okay.

20 I have no further questions. Thank you very much.

21 MR. MORSEBURG: I have no questions.

22 THE VIDEOGRAPHER: We're going off the record. The
23 time is 12:15. This is end of Tape 2 and concludes the
24 deposition of Kevin Minissian.

25 (The proceedings concluded at 12:15 p.m.)

0137

1

2

3 I declare under penalty of perjury under the laws

4 of the State of California that the foregoing is true

5 and correct.

6

7 Executed at _____, California,

8 on _____.

9

10

11

KEVIN G. MINISSIAN

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0138

1 I, DIANE M. LYTLE, CSR 8606, do hereby declare:

2 That, prior to being examined, the witness named in
3 the foregoing deposition was by me duly sworn pursuant
4 to Section 30(f)(1) of the Federal Rules of Civil
5 Procedure and the deposition is a true record of the
6 testimony given by the witness.

7 That said deposition was taken down by me in
8 shorthand at the time and place therein named and
9 thereafter reduced to text under my direction.

10 _____ That the witness was requested to review the
11 transcript and make any changes to the
12 transcript as a result of that review
13 pursuant to Section 30(e) of the Federal
14 Rules of Civil Procedure.

15 _____ No changes have been provided by the witness
16 during the period allowed.

17 _____ The changes made by the witness are appended
18 to the transcript.

19 _____ No request was made that the transcript be
20 reviewed pursuant to Section 30(e) of the
21 Federal Rules of Civil Procedure.

22 I further declare that I have no interest in the
23 event of the action.

24 I declare under penalty of perjury under the laws
25 of the United States of America that the foregoing is
true and correct.

26 WITNESS my hand this _____ day of

27 _____, _____.

28 _____
29 DIANE M. LYTLE, CSR 8606

30

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32

33